(15,928.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 639.

JOSEPHINE W. WUPPERMANN, APPELLANT,

vs.

THE STEAMSHIP "CARIB PRINCE," HER ENGINES, &c., ERNEST LEGGE, CLAIMANT.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT.

JOSEPHINE W. WUPPERMANN,
Libellant and Appellant,

vs.

THE STEAMSHIP "CARIB PRINCE," HER ENGINES, &c., ERNEST C. LEGGE,
Claimant and Appellee.

MANUEL CADENAS ET AL.,
Libellant and Appellant,

vs.

THE SAME,
JAMES KNOTT,
Claimant and Appellee.

CLIFFORD L. MIDDLETON ET AL.,
Libellants and Appellants,

vs.

THE SAME.

WILLIAM GILLESPIE ET AL.,
Libellant- and Appellant-,

vs.

THE SAME.

APOSTLES.

Appeals from the District Court of the United States for the Eastern District of New York.

[Stamped:] United States circuit court of appeals, second circuit. Filed Apr. 5, 1895. James C. Reed, clerk.

United States District Court, 1

EASTERN DISTRICT OF NEW YORK.

JOSEPHINE W. WUPPERMANN

vs.

The Steamship "CARIB PRINCE," her engines, &c., ERNEST C. LEGGE,

Claimant. 2

STATEMENT.

1893.	Sept.	19.	Libel filed. No process issued.
	"	"	Claim filed by Ernest C. Legge, master, agent for James Knott, owner.
	"	"	Stipulation for value filed.
1894.	March	13.	Answer filed.
	June and	14 to 18.	Cause tried before Honorable Charles L. Benedict, *Judge*.
	Oct.	4.	Decision rendered.
	"	11.	Final decree entered. 3
	"	20.	Notice of appeal and assignment of errors filed.

4 To the Honorable CHARLES L. BENEDICT, Judge of the District Court for the United States for the Eastern District of New York:

The libel and complaint of Josephine W. Wuppermann against the steamship *Carib Prince* in a cause of contract, civil and maritime, alleges and articulately propounds as follows:

FIRST.—That your libellant resides in the City of New York, and is engaged in business therein.

SECOND.—That on or about the 31st of August, 1893, there was shipped upon the steamship *Carib Prince*, then lying in the Gulf of Paria, and bound
5 for the port of New York and engaged in business as a common carrier by Doctor T. G. B. Siegert & Sons, five hundred cases Angostura bitters, the property of your libellant, to be carried to the port of New York, and there delivered unto your libellant in the like good order as received, for a freight agreed to be paid therefor, and the agents of said steamship signed bills of lading therefor, dated the 31st of August, 1893, whereby they acknowledged the receipt of said 500 cases in good order and well conditioned, and undertook to deliver the same at the port of New York in like good order.

6 THIRD.—That thereafter, and on or about the day of September, 1893, the said steamship *Carib Prince* arrived at the port of New York and there delivered to libellant the said five hundred cases, but not in like good order as received, and that your libellant has suffered damages thereby in the estimated amount of fifteen hundred dollars, payment of which has been demanded of said agents of said steamship and refused.

FOURTH.—That the said steamship *Carib Prince* is now in the port of New York and within the jurisdiction of this Honorable Court.

FIFTH.—That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court. 7

Wherefore, libellant prays that process in due form of law issue against said steamship, her tackle, &c., and that all persons interested therein may be cited to appear and answer all and singular the matters aforesaid, and that the said steamship may be condemned and sold to pay the same to your libellant, with interest and costs, and that otherwise right and justice may be done.

JOSEPHINE W. WUPPERMANN.

Sworn to before me this 18th day of September, 1893.

AVERY F. CUSHMAN,
[L. S.] Notary Public,
Kings County.
Certificate filed in New York County. 8

GEORGE A. BLACK,
Proctor for Libellant,
44 Pine Street,
New York City.

(Endorsed)—Libel filed September 19, 1893.

To the Honorable CHARLES L. BENEDICT, United States District Judge for the Eastern District of New York: 9

The answer of James Knott, owner and claimant of the steamship *Carib Prince*, to the libel and complaint of Josephine W. Wuppermann against the steamship *Carib Prince* in a cause of contract, civil and maritime, alleges as follows:

FIRST.—He has no knowledge of the matters alleged in the first article of the libel and requires proof thereof if material.

10 SECOND.—He has no knowledge of the matters alleged in the second article of the libel and requires proof thereof if and in so far as they are material.

THIRD.—He has no knowledge of the matters alleged in the third article of the libel and requires proof thereof if and in so far as they are material.

FOURTH.—He admits the matters contained in the fourth article of the libel.

FIFTH.—He denies that all and singular the premises are true, but admits the jurisdiction.

SIXTH.—For a further defense, the claimant avers
11 that the bills of lading under which the merchandise in question is alleged to have been carried provided that the merchandise in question was "to be delivered from the ship's deck, where the ship's responsibility shall cease, in the like good manner and well conditioned, at the aforesaid port of New York; the act of God * * * loss or damage from heat or fire on board, in hulk or craft or on shore, explosion, steam, accidents to or latent defects in hull, tackle, boilers and machinery, or their appurtenances, jettison, barratry, any act, neglect or default whatsoever of pilots, masters or crew in the management or navigation of the ship * * * and all and every other dangers and accidents of
12 the seas, rivers or steam navigation, of whatever nature or kind always excepted. * * * Weight, measure, quality, contents and value unknown, and not accountable for inaccurate description of goods shipped, for leakage, breakage or insufficiency in packing, or in strength of package, obliteration of or inaccuracies of marks, numbers, designation or address on the packages, nor for damage or loss from vermin, sweating, decay, heat of holds, contact with, or smell or evaporation from other goods; nor for any consequences arising from any of the foregoing exceptions."

That the owner and charterer of said vessel used

all due diligence to have her properly equipped, 13
manned, provisioned and outfitted, and in every way seaworthy and capable of performing her intended voyage, and used all due diligence in and about the transportation of the merchandise in question, and allege that if the cargo mentioned in the libel was damaged as alleged, the damage was due to latent defects in certain rivets, angle irons, braces and straps in the bulkhead between the No. 1 hold and the peak tank just forward of it, or to some error or fault in the management or navigation of the vessel in filling the said peak tank on the voyage, as will more fully appear on the trial of this cause.

The claimant further alleges that each and all of 14
the above mentioned exemptions in the bill of lading are valid by the law of England, which prevails at the port where said merchandise is claimed to have been shipped, and where the said bills of lading are alleged to have been issued.

Wherefore, claimant prays that the libel may be dismissed, with costs, or that the claimant have such other relief as he may be entitled to receive.

CONVERS & KIRLIN,
Proctors for Claimant.

Southern District of New York, ss.:

E. B. CONVERS, being duly sworn, says: That he
is one of the proctors for the claimants herein, and 15
that the foregoing answer is true, according to his information and belief, derived from statements made by the officers of said steamship. He further says that the claimant is absent from the United states.

E. B. CONVERS.

Sworn to before me this 13th day of March, 1894.

CHARLES A. BRODEK,
[L. S.] Notary Public,
N. Y, Co.

(Endorsed—Answer filed March 13, 1894.)

16 UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

JOSEPHINE W. WUPPERMANN

vs.

The Steamship "CARIB PRINCE."

Before Hon. CHARLES L. BENEDICT, Judge.

CLIFFORD L. MIDDLETON *et al.*

17 vs.

THE SAME.

MANUEL CADENAS *et al.*

vs.

THE SAME.

18 WILLIAM GILLESPIE *et al.*

vs.

THE SAME.

BROOKLYN, N. Y., June 14, 1894.

APPEARANCES:

GEORGE A. BLACK, Esq., for the Libellants.

CONVERS & KIRLIN, Esqs. (Mr. Kirlin), for the Claimants.

The pleadings in the respective cases are read. 19

The exceptions filed by the libellant Josephine Wuppermann are withdrawn.

In all the cases the partnership of the libellants and the ownership of the property by the libellants are admitted.

It is considered that the manifest is in evidence, and it is admitted that the cargo was on board and bills of lading were given.

It is admitted that under the English law the language of the bill of lading made a valid contract.

Mr. Black reads deposition of ERNEST C. LEGGE, taken on behalf of the libellant, as follows:

20

Q. What position do you occupy on the steamship *Carib Prince?* A. Master.

Q. How long have you been her master? A. Three months; since she has been out.

Q. You mean by her being "out" that she is a new vessel, just finished, and that you took command of her when she was first put in commission? A. Yes, sir.

Q. And the month you took command of her was what? A. Last June.

Q. Is she an iron vessel? A. Iron and steel, composite.

Q. Has she between-decks? A. Yes, sir.

Q. With water tight compartments? A. Yes, sir. 21

Q. Has she a collision bulkhead? A. Yes, sir.

Q. Has she water ballast tanks? A. Yes, sir.

Q. Has she any other tanks besides the water ballast tanks? A. Only fresh water tanks.

Q. Is there a tank forward of the collision bulkhead? A. Yes, sir.

Q. Is that a fresh water tank? A. No, sir; salt water.

Q. How is that filled? A. Filled from the deck by a hose from the steam service pipe.

Q. Do you mean a hose led down into it, or by a

22 pipe leading down into it, by which a hose is attached? A. By which a hose is attached.

Q. How is it emptied? A. Emptied by connections from the engines.

Q. And it is pumped out and discharged through the scuppers on deck? A. Through the engine valves, through the engine-room.

Q. That is, by opening some valve they can let it run into the engine-room, and it is from there pumped out? A. Yes, sir; it is by direct connection with the ballast pump.

Q. What is the capacity of that tank in foward of that collision bulkhead? A. To the best of my knowledge, I think it is eighty-three tons.

23 Q. Do you know what that represents in gallons, about? A. I haven't figured it out; some thousands.

Q. The *Carib Prince* is a freight steamer entirely, is she not? A. Freight and passenger.

Q. What are the ways in which her holds are designated, by numbers or by names? A. By numbers.

Q. The one next to the collision bulkhead is number what? A. No. 1.

Q. And running aft the successive ones are what? A. 2, 3 and 4.

Q. How many has she altogether? A. Four.

Q. Does the ballast tank, which is aft of the collision bulkhead, extend the entire length of the

24 vessel? A. Yes, but it is divided by the bulkhead.

Q. It is a tank which, if not divided, would extend the entire length of the vessel? A. Yes, sir.

Q. Do each of those tanks extend the entire width of the vessel? A. No.

Q. How much short of the width of the floor do they extend? A. The bilges on each side.

Q. The bilges are the triangular spaces formed by the sides of the vessel and the upright sides of the tank? A. Yes, sir.

Q. About how wide are those bilges? A. They vary in size according to the shape of the ship.

Q. In the No. 1 lower hold about what would be

the width of the bilges? A. About eighteen inches 25
at the widest; right forward there is no room to admit of bilges, just a space.

Q. How deep is the tank forward of the collision bulkhead; does it run from the main deck down, or is it a deck below the main deck? A. From the between-decks to the bottom of the ship.

Q. And does the collision bulkhead form one of the sides or faces of the tank? A. Yes, sir; one side.

Q. What is that collision bulkhead made of? A. Steel plate.

Q. In one or more than one piece? A. A number of pieces.

Q. And those pieces are jointed together by lapped 26
joints, are they not? A. They are lap-jointed.

Q. Isn't it also reinforced by angle iron or some form of iron which gives it something to stiffen it? A Yes, sir.

Q. On which side does this stiffening or additional iron come? A. On the inside.

Q. That is in the No. 1 hold? A. In the inside of the tank, the fore part of the collision bulkhead.

Q. Is there nothing on the other side of it. A. No, sir.

Q. So that it is perfectly smooth? A. There is nothing but between-deck ties; that is on the top.

Q. What is the tonnage of this vessel? A. 1,304 net tonnage.

27

Q. How long is she? A. Three hundred feet.

Q. What is the draft of water to her, Plimsoll? A. I don't remember.

Q. Look at your log, if it will give it? A. I haven't it in the log. It is noted in the official log, but I haven't the official log here.

Q. Don't you know? A. I don't remember.

Q. What is the extreme draft you have ever loaded her to aft and forward? A. Her extreme draft, as near as I can say, is about 18 feet 3 aft, and 17 feet 9 forward; her proper loading draft

28 that she could load to is about 20 feet; but she has never been down to that.

Q. Do you remember what day it was that you sailed from Trinidad in the month of September of this year? A. We left Trinidad on the 31st of August.

Q. Did you stop at any port or come direct? A. Stopped at Grenada.

Q. What day did you leave Grenada? A. The next day.

Q. Where is Grenada? A. Grenada is just north of the island of Trinidad.

Q. Did you take in any cargo at Grenada? A. No, sir.

29 Q. And from there you came direct to New York? A. Direct to New York.

Q. What kind of cargo had you on board when you left Trinidad? A. We had asphalt, cocoa, cocoanuts, a very little sugar, hides and bitters.

Q. In which compartment were the bitters stowed? A. In No. 1 compartment.

Q. In which compartment was the cocoa stowed? A. No. 1 also.

Q. What part of No. 1 were these things that I have mentioned stowed? A. On the floor right across the hold.

Q. I think I did not ask you whether or not there was a floor laid in No. 1 hold on top of the ballast
30 tank? A. Oh, yes.

Q. What kind of a floor is that? A. A wooden floor.

Q. Not a caulked floor; open, isn't it? A. It is caulked across, but not tight in the bilges.

Q. You mean that at the bilges it is open entirely? A. The limber boards are laid there, but not tight.

Q. These bitters and this cocoa, I understand you, were stowed upon the floor? A. Yes, sir.

Q. On your arrival at New York did you find any damage to the cargo which had been stowed in No. 1? A. Yes, sir.

Q. It was wet with water, wasn't it? A. Yes, 31
sir.

Q. Did you at any time on that voyage fill the ballast tank forward of the collision bulkhead? A. Yes, sir.

Q. On what day was that filled? A. On the Sunday night, the 3d of September.

Q. When you left Grenada it had not yet been filled? A. No.

Q. How was it filled; by pumping the water in it with the pumps in the engine-room? A. Yes, sir.

Q. Who attended to that business of filling it? A. The chief officer.

Q. Who gave the orders to have it filled? A. I did.

32

Q. At that time did you, or not, know that the ballast tank was defective? A. I did not know it.

Q. When did you first find out that it was defective? A. By sounding the tank the next morning.

Q. What did you discover by sounding it? A. Discovered that the tank wasn't full when it had been full the previous night after filling it.

Q. How much of it did you find had got out? A. Over four feet of water.

Q. You didn't tell me how deep that tank was from the under side of the between-decks which forms the top of it to the bottom, which I believe you said was the floor of the ship? A. About 33
twenty-four feet.

Q. And do the sides of the ship form the sides of the tank? A. Yes, sir.

Q. Did you investigate to see what had become of this water which had got out of this tank when you discovered that there was a leak? A. Yes, sir.

Q. Where had it gone to? A. In the fore hold, No. 1 compartment.

Q. Did you open the fore hold and go down into it? A. Yes, sir.

Q. Did you see the condition of things when you went into it? A. Yes, sir.

Q. What did you discover? A. Discovered there was water in the hold.

Q. Water slopping around in there? A. Yes, sir; by the movement of the vessel.

Q. On top of the cargo or not up to the top? A. Not up to the top.

Q. How high did it come up on the cargo? A. Abour two tiers up; a little over two tiers.

Q. That means how many feet above the floor? A. About three feet.

Q. What steps did you take to get that water out of the No. 1 hold? A. Moved the bags and the cases that were in the sides of the ship so as to clear the limber boards so as to allow the water to get into the bilges and be pumped out through the engines.

Q. In order to reach the engine there had to be some valve opened? A. No, sir.

Q. How is the bilge connected with the engine-room? Isn't it through a valve of some kind, or a cock, or some method of opening and shutting? A. It goes right through to the second collision bulkhead.

Q. Where is the second collision bulkhead? A. The after part of No. 2 hold and the fore part of No. 3 hold, the engine and boiler-room division.

Q. Is that bilge connection always open so that if any water reaches the bilges it will be sure to reach the engine room eventually? A. Yes, sir.

Q. It must do that? A. Yes.

Q. There is no stoppage for it? A. There is a sluice on the second collision bulkhead.

Q. Which is the division between No. 2 and the engine-room? A. Yes, sir.

Q. Is that sluice always kept open to the engine-room, so that if water accumulates in the bilges it will run off? A. Always open.

Q. The only reason why this water did not run off from No. 1 was the fact that the cargo lying on the limbers had stopped the access of the water to the bilges? A. Yes, sir; after we moved this cargo

to get the water away we bored holes to let the water go through. 37

Q. And until you bored those holes the water staid there? A. Yes, sir.

Q. Did you investigate the condition of that bulkhead to find out how it was that the water had escaped from the tank through the collision bulkhead? A. Yes, sir; we made a survey.

Q. What did you find to be the fact as to that? A. We found water leaking through a rivet hole.

Q. In which there were no rivets? A. Part of the rivet was in it; the head was off of it.

Q. Did you find any spaces where there were no rivets at all? A. No.

Q. None? A. No. 38

Q. Were you present at a survey held in New York on that bulkhead? A. No.

Q. Did you go down into this tank yourself? A. No.

Q. Only into the No. 1? A. Yes, sir.

Q. How many rivets did you find in the condition you have mentioned, without heads? A. One.

Q. What did you do with respect to that one? A. Ordered the carpenter to punch it out and put a plug in to stop the leak.

Q. Did that stop it? A. Yes, sir; and at the same time I ordered the tank to be pumped out as well.

Q. And was that done? A. Yes, sir.

Q. As I understand, none other of your cargo was damaged except that in No. 1? A. Nothing else. 39

Mr. Kirlin reads CROSS-EXAMINATION:

Q. Who were the builders of this steamer? A. Joseph Short & Co.

Q. Are they builders of good standing?

Objected to as immaterial.

A. They are supposed to be.

Q. What did you mean by saying that part of the vessel was of iron and part steel? A. The hull of the

40 vessel is steel, but the between-decks are iron, I believe.

Q. What are the bulkheads? A. The bulkheads are of iron.

Q. Do you know about that positively? A. That is to the best of my knowledge.

Q. How did you come to fill up this tank on the 3d of September? A. On leaving Grenada, the vessel was three feet by the stern, and proceeding to New York every day using coal, burning coal, puts her more by the stern.

Q. It lightens her up forward? A. I considered it absolutely necessary to fill this ballast tank to keep the vessel in trim.

41 Q. Had you a cargo on board? A. Yes, sir.

Q. What was the draft when you left Grenada? A. 14 feet 10 forward, and 16 feet 10 aft.

Q. Had you had a cargo on the voyage from New York to Trinidad also? A. Yes, sir.

Q. How high is the ballast tank in the No. 1 hold; how high does it extend up from the skin of the ship? A. 3 feet 8.

Q. Amidships or the forward end? A. That is a level tank; it only alters in the curve of the ship.

Q. Allowing for the curve of the ship up to the edge of the bulkhead, what would be the depth of the bilge at the after end of No. 1? A. 2 feet.

Q. What would it be at the forward part of No.
42 1? A. 15 to 18 inches.

Q. What is the size of the hole to the bulkhead between No. 1 and No. 2 that carries the water off? A. About 2½ to 3 inch limber holes.

Q Then it goes back to the bilge of No. 2 hold and stops at the engine-room bulkhead? A. Yes, sir.

Q. What is the size of the sluice into the engine-room? A. Three inches square, with a gate.

Q. Where is that gate managed from? A. From the deck.

Q. As a matter of fact, the opening or closing of that sluiceway is left to the discretion of the

engineer, is it not? A. Not always; in case of anything serious—— 43

Q. Ordinarily it is closed, isn't it? A. In the ordinary run of the ship it is always kept open; it is there to close in case of accident.

Q. Are you sure the floor of the hold is caulked? A. Yes, sir.

Q. Well, the limber boards you said were not caulked, but when you went to get them up, you found them soaked tight, so that no water went through them?

Mr. Black: I object to that question "soaked tight" as not testified to by the witness, and as leading.

44

A. Of course, when there is a lot of cargo right across the ship and there is water on the top it is difficult to find the exact position of the handles to lift the boards: you might have to lift a lot of cargo before you found the handles, and I moved some away and bored the holes in place of finding the handles.

Q. It was intended originally, I suppose, to have the boards loose enough so that the water in the hold will go through them to the bilge?

Objected to.

A. No; they are not so intended. They are intended to be lifted so as to clean the bilge. 45

Q. Otherwise you say they are intended to be tight? A. I don't know that there is any law that they should be tight; they are ordinary planks, and made to fit in; they are not made water tight; water might get in, and water might not.

Q. I suppose you don't know whether some of the water went in or not, do you? A. No; I don't know.

Q. When you finally got to them and got them raised up, did you find them soaked tight? A. We didn't raise them at all.

46 Q. Did you raise them in New York? A. We raised them in New York.

Q. How did they raise then; easily, or how? A. Hard; had to ply them open with a bar.

Q. Do you know the depth of the ship from the top deck to the keel? A. 26 feet loaded depth amidships.

Q. Would she be that deep in the fore peak? A. No, less nine feet, I think.

Q. How deep would it be there? A. 20 to 21 feet.

Q. From the top of the tank to the bottom of the tank, what is your best judgment as to the depth? A. 20 or 21 feet; I should say about that; I have not been in the tank.

47 Q. When you went down into the No. 1 hold, what time of day was it? A. The first thing in the morning.

Q. Of the 4th of September? A. Yes, sir.

Q. Whom did you find there when you got there? A. The chief engineer had gone down there before me, and the chief officer.

Q. Did you ascertain what the cause of the damage was; did you see it right away? A. No; I didn't see it right away; the mate notified me at once that it was the fore tank that had been leaking, upon the carpenter's reporting to him directly he had sounded it.

Q. What did you find when you had examined
48 the bulkhead? A. Found a rivet head was broken in No. 1, on the cargo side.

Q. On the port or starboard side? A. On the port side.

Q. How near the side of the ship? A. Well, it was about eighteen inches from the side; two feet or 18 inches.

Q. A rivet head on the hold side of the bulkhead was gone? A. Yes, sir.

Q. Did you find that? A. Yes, sir; lying on the bags of cocoa.

Q. Who picked it up? A. The carpenter, and passed it to the chief officer.

Q. Was it lying right underneath the place where 49
it had dropped off the boat? A. Yes, sir.

Q. And you saw it picked up, did you? A. No, sir. I didn't see it picked up; I was just coming down the hold.

Q. How many tiers of cargo were right where the rivet head was picked up? A. About four tiers.

Q. How far above the top of the cargo was the broken rivet? A. It was on the second tier down below the top of the cargo.

Q. Then the rivet would be about three feet above the floor in the No. 1 hold, the broken rivet? A. About that; yes.

Q. How much water was there in the hold? A. I couldn't say exactly, you know, because the cargo 50
being there of course the water would wash around the space around the bags.

Q. You said it washed up and damaged two tiers? A. Yes, sir.

Q. Do you mean to say that the hold was full of water to the depth of two tiers? A. Of course the motion of the vessel would swash the water about.

Q. Do you know how deep the water was on the floor? A. I should say about 18 inches.

Q. The entire length of the hold? A. No, in the after end; of course the sheer of the ship would allow the water to go off against the next bulkhead.

Q. Was there any water on the floor at the for- 51
ward end of the hold? A. Nothing permanent there; just what swashed about.

Q. How long is the space in the fore-peak from the collision bulkhead to the forward part of the tank? A. Fifteen feet, as near as I can think now.

Q. When you discovered this broken rivet was water coming through the rivet hole? A, Yes, sir.

Q. Squirting out? A. Yes, sir.

Q. What is the diameter of the rivet hole? A. Three-quarters of an inch.

Q. Was this cargo transported under bills of lading? A. Yes, sir.

52 Q. The cocoa and the bitters? A. Yes, sir.

Q. Have you copies of the bills of lading with you? A. I have.

Q. Will you please produce bills of lading covering the cocoa marked A G & C, *Loisa* and *Magdalena?* C C

The witness produces the bills of lading called for.

Q. What signatures do they bear? A. The signature of our agents in Trinidad.

Q. Who are they? A. Turnbull, Stewart & Co.

Q. That is, the agents of the Trinidad Line? A. Yes, sir.

53 Q. Did you sign any bills of lading at all? A. Not myself.

Mr. Kirlin: I offer these bills of lading in evidence, subject to the right of the libellants to substitute the originals from the Custom House, if desired.

The bills of lading are marked Claimants' Exhibits 1 and 2, respectively.

Q. Will you please produce the bill of lading for the Angostura bitters? A. This is it, sir; the original was signed in the same way.

Bill of lading offered in evidence.

54 Taken under the same stipulation and marked Claimants' Exhibit 3.

Q. What time did you leave New York on the voyage from here down to Trinidad? A. Fifteenth of August.

Q. What kind of a voyage did you have down?

Objected to as immaterial.

A. Very rough one—rough weather going down.

Q. Were you in the hurricane of the 20th of August?

Objected to as immaterial.

A. Yes, sir. 55

Q. How long did that last; how long were you in it?

Objected to as immaterial, and it is stipulated that this objection shall apply to all the inquiries as to the previous voyage without being noted each time.

Q. When did you get into the hurricane first? A. Sunday, the 20th.

Q. Have you the mate's log with you? A. Yes, sir.

Q. Do the occurrences during the hurricane appear in the log? A. Yes, sir.

Mr. Kirlin: I call upon proctor for libellants to 56
produce the log so that I may offer it in evidence.

Mr. Black: Well, that's cheeky.

The log is produced by the witness.

Q. Were you subpœnaed to produce the log? A. I was.

Q. Will you please produce your subpœna?

The witness produces the subpœna.

The subpœna is offered in evidence and marked Claimants' Exhibit 4.

Q. When did the gale begin on the 20th of August; what time of day? A. Sunday evening, about eight o'clock. 57

Q. What is the first entry in the log in relation to the gale?

Same objection as before, and same stipulation to apply.

A. (Reading.) "Sunday, Aug. 20, 8.30. Gale "increasing with heavy squalls, sea rising and "barometer falling rapidly. Vessel shipping very "heavy water fore and aft."

Q. What was your course at that time? A. S. by E. half E.

58 Q. Which way did the storm come from? A. E. S. E.

Q. Did you make any change in the speed in consequence of that storm? A. Yes, sir; eased her down.

Q. Did you make any change of course on account of it? A. No; I found she laid very well to the wind in the position she was.

Q. Did you heave-to in consequence of the storm? A. Yes, sir.

Q. When? A. At midnight on Sunday night.

Q. What is the entry in the log on the 21st of August?

59 Objected to on the ground that the log speaks for itself; also as immaterial and incompetent.

The page of the log under date of August 21st is offered in evidence and is marked Claimants' Exhibit 5.

It is as follows:

"A. M. Gale increased to a hurricane with ter-
"rific squalls, causing a tremendous sea. Atmos-
"phere thick with driving rain and spray. Ship
"laboring and straining exceedingly, shipping huge
"quantities of water fore and aft.

"1 A.M. All hands were called, and oil was used
"from the midships water-closet, and four oil bags
60 "along the weather side. Hands securing large spar
"on starboard side aft which had worked adrift in
"its lashings, also trying to protect the sheep which
"were carried on the after deck.

"3 A.M. Wind veered to North, causing terrific
"cross sea Barometer 28.67.

"5 A.M. Wind veered to N. W., still blowing a
"hurricane. Barometer 28.60 (lowest reading).

8 A.M. Wind had veered to West, a terrific sea.
"Barometer rising rapidly, hurricane moderating
"somewhat.

"Noon. Wind abating somewhat, having veered
"to South. Barometer 29.64, but tremendous cross

"sea running, ship rolling and straining very 61
"heavily.

"No observations possible this day.

"4 P.M. Wind had veered to S. S. E., blowing a "heavy gale, sky clearing somewhat. Barometer "29.80. During the afternoon one of the sheep "pens was smashed by a heavy sea and eight sheep "were either killed or drowned. Oil still being "used on the sea and engines worked just sufficient "to keep her to the sea. During the night shipped "a heavy sea and smashed the fiddly bulkhead door, "starboard side.

"6 P.M. Ship's head S. S. E., and a little more "speed put on the engines, the wind having de- "creased considerably.

"8 P.M. Weather inproving, sea going down, en- 62
"gines going good, slow.

"Midnight. Engines put ahead full speed, log "streamed; strong breeze with high head sea and "overcast sky, wind S. S. E."

Q. How much distance did you make during the day of the 21st? A. From Sunday mid-day till Tuesday mid-day we did 203 miles.

Q. Did the engines go full speed during Tuesday, the 22d? A. Yes, sir.

Q. All day? A. Yes, sir.

Q. That 203 miles represents full speed on Tues- day up to noon as well as what was made on Sun- 63
day and Monday? A. From Sunday mid-day till Tuesday mid-day she did 203 miles.

Q. What is the average speed of your vessel? A. Seven and a half knots.

Q. How did the steamer behave during the hurri- cane? A. Very well; I was surprised how well she did behave.

Q. Did she strain at all? A. She is bound to labor in a sea like that.

Q. What do you say as to the severity of the storm as compared with other storms you have been in? A. It was a very serious hurricane; I have been in

64 one other West Indian hurricane in about that position and I don't think there was much difference between them; this one was a little worse, I think, than the last one I had two years ago, which was reported in the American papers.

Q. How long have you been going to sea? A. Fifteen years.

Q. Have you ever been in a worse hurricane than this one? A. I don't think I have.

Q. Where have you been trading to during that time? A. For the last ten years in the West Indian trade.

Q. What was the location of the vessel at the time she met this hurricane? A. As near as I could
65 say it would be about 23.40 north and about 66.10 west.

Q. Was the tank filled on that voyage at all from New York to Trinidad? A. No, sir.

Q. Was it filled in Trinidad or Grenada? A. No, sir.

Q. Was it filled at any time after the hurricane prior to the 3d of September? A. No, sir.

Q. Was it examined at any time after the hurricane and before it was filled? A. It was.

Q. By whom, and when? A. By the chief engineer, and after the hurricane.

Q. Did he make any report to you of his examination?

66 Objected to.

A. No, sir.

Q. Did you know at any time prior to the time you filled the tank on the 3d of September that any of the rivets were defective? A. No indication at all.

Q. Had there been any rough weather from the time you left Trinidad or Grenada up to the time you discovered water in the hold? A. No.

Q. I suppose the ordinary business of this vessel is the transportation of merchandise and passengers, too, is it not? A. Yes, sir.

Q. Do you know what the construction is on the inside of the tank at the point where the defective rivet was discovered? A. I have never been inside of the tank at all. 67

Q. Was this tank tested in England before you left with the ship?

Objected to on the ground that the witness must not speak from hearsay.

A. Yes, sir.

Q. By whom, and when? A. It was tested before the vessel left the stocks by the inspector.

Q. What is his name? A. Sharp; one of Lloyds' inspectors.

Q. Was the vessel classed? 68

Objected to.

A. Yes, sir.

Q. What is her class? A. A1 at Lloyds.

Q. What kind of passage did you have from England to New York? A. Moderate.

Q. Was that tank filled on the voyage from England to New York? A. No.

Q. Had it ever been filled from the time she started on the voyage from England until you filled it on the 3d of September? A. No.

Mr. Black reads REDIRECT-EXAMINATION:

Q. Is there a hatchway to get into this tank? A. Yes, sir. 69

Q. With a hatch cover to it in the between-decks of the fore peak? A. Yes, sir.

Q. You say that this rivet with the head off was on the port side, about 18 inches from the side? A. Yes, sir.

Q. How far was it above the floor? A. About four feet, as near as I can say.

Q. Were there rivets in a line above it where the plates joined—was it a horizontal joint or a perpendicular joint? A. Horizontal.

70 Q. Were there rivets running across the ship on the same line? A. Not right across.

Q. Did they run as far as that one plate was where that rivet extended? A. Yes, sir; they were riveted through the whole plate of the bulkhead.

Q. How wide was the plate where this one broken rivet was? A. I can't answer that; the way the ship is built the plate might be cut up to fit in.

Q. Was it more than a foot wide? A. Yes, I should say it was.

Q. More than two feet wide? A. I should say it was fully two feet wide.

Q. Was it no more than that, in your judgment, or might it have been a little more? A. About
71 that.

Q. About how far apart were the rivets in that plate? A. About four inches, I think.

Q. As much as four inches? A. Of course this is only guesswork.

Q. I want you to give me your best judgment? A. From three and a half to four inches is the pitch from centre to centre.

Q. And in the plate of two feet there must have been as many as six or eight rivets? A. Yes, sir.

Q. And only one was broken? A. Yes, sir.

Q. And no more that you discovered? A. No more that I discovered.

Q. How long were you below in this No. 1 when
72 you went down to look after this water? A. Quite a little while.

Q. That is an indefinite period; was it an hour or a day? A. I should say I was down there a good hour.

Q. You say that this particular rivet was below the top of the cargo? A. Yes, sir.

Q. And that the cargo came against this collision bulkhead? A. Not right against it; we always leave a few inches; it was stowed up to the bulkhead, about two or three inches of the bulkhead.

Q. How high above the place where the broken rivet was, was the top of the cargo at that collision bulk-

head in the lower hold? A. About a tier and a half 73
of bags above; about three feet, I should think.

Q. Was it all on one level across the ship? A. Yes, sir.

Q. Did you remove the cargo from that bulkhead in order to find this broken rivet, or was it while you were moving the piles at the bilges in order to get at the limber boards that you discovered this broken rivet head? A. When we were looking at the bulkhead we heard the sound of water coming through this hole.

Q. Did you remove any of the cargo from that bulkhead to examine the whole of the face of the bulkhead? A. A few bags. The bulkhead there doesn't run right across the ship on the whole side; 74
there is a bulkhead across, and then there is a casing around in the middle which is the chain locker.

Q. How much of the face of the bulkhead does the chain locker cover? A. It takes about 6 or 8 feet.

Q. That is, you mean athwartships, running across? A. In the centre of the bulkhead.

Q. How much in height? A. From the bottom of the ship up to the between-decks.

Q. And is that all solid casing so that you couldn't look into it in any way except by going down from above? A. That is the only way to get into it.

Q. Did you go into that locker? A. I did not.

Q. Did any one go into that locker at that time? 75
A. I did not; it was full of chain.

Q. How close to the side of the chain locker was this broken rivet? A. Three or four feet.

Q. And there was an equal space, I suppose, between the starboard side of the chain locker and the starboard side of the ship? A. Yes, sir.

Q. Did you remove the cargo from that side of the chain locker so as to examine that side of the bulkhead? A. No, sir.

Q. You said you heard the water gurgling? A. Yes, sir.

76 Q. That indicated to you that the tank had not yet emptied itself to the level of that hole, didn't it? A. Yes, sir.

Q. Of course the upper part of the tank has much the larger capacity, has it not? A. Yes, sir.

Q. How soon after discovering this leak through this broken rivet was the tank pumped out? A. Immediately commenced.

Q. How long did it take before it was emptied? A. About an hour and a half.

Q. And during that time, of course, the water was still running? A. As I previously told you, we had plugged it up with a wooden plug or rivet of some kind.

77 Q. Was the bill of lading which was given for Christall's cocoa the same in form as the bills of lading you have already produced? A. Yes, sir.

Q. (Handing paper to witness.) Do you recollect that as being one of the bills of lading given for the cocoa? A. Yes, sir.

The bill of lading is maked for identification Libellants' Exhibit A.

Q. You say that this tank was tested by Mr. Sharp at the time the vessel was on the stocks; were you present? A. No, sir.

Q. All you know about it is what you heard from some one? A. No; I take it on the supposition that
78 the vessel would not have been allowed to have been past the inspection if it had not been witnessed or gone through the ordinary office of inspection.

Q. From the time you got charge of the vessel down to the time you filled this tank on the 3d of September, it had never been filled? A. It had never been filled.

Q. You say you personally made no inspection of this tank before it was filled after this storm that you have mentioned? A. No, sir; I did not.

Q. What was the previous port your vessel was at before she went to Trinidad on this voyage? A. Grenada, on the way down from New York.

Q. And then she went from Grenada to Trinidad? 79
A. To Trinidad; yes.

Q. What was her draft on the voyage down? A. 15 feet 3 forward, and 17 feet 4 aft.

Q. On the voyage from Trinidad or Grenada to New York, on which this occurrence happened, her draft was 14 feet 10 forward and 16 feet 10 aft before you put the water into the tank? A. Yes, sir.

Q. When you put the water into the tank what was her draft? A. We were at sea then and we couldn't ascertain exactly the draft; that tank ought to tip her 6 or 8 inches.

Q. When you emptied the tank you came to New York without anything there? A. Yes, sir. 80

Q. You didn't shift any cargo? A. No, sir.

Q. And didn't change the trim of the vessel at all? A. I had no other way to do it.

Q. And you arrived in safety? A. Yes, sir; only she didn't steam as fast; that is the only thing; the runs in the log book will show that.

Q. Give me the precise hour at which this tank was filled up on the 3d of September? A. 10 P. M. of the 3d; it was emptied at 6 A. M. of the 5th. The tank was filled for a period of thirty-two hours.

Q. What was the speed you made while the tank was filled? A. 247 miles the first twenty-four hours; the next day's run was 246 miles, an average speed of about 10¼ miles.

Q. What was the speed during the next twenty- 81
four hours? A. 241.

Q. That was when the tank was empty? A. Yes, sir.

Q. What do you mean here in the log by the "fiddly bulkhead door"? A. A division bulkhead for the passenger promenade deck. It is a door in the fiddly used in port for passing coal through.

Q. What is the fiddly? A. The upper casing of the boiler and engine-room.

Q. Is it below the main deck, or on the main deck?

82 A. The square casing that the funnel is supposed to ship on to.

Q. A piece of wood that is held in place by buttons or fastenings of some sort? A. A wooden bulkhead that is built up to prevent the heat from radiating out from the engine-room to the promenade deck. It has a door which can be take out so that we can coal the ship with convenience, and that door was carried away.

Q. And that door is fastened in by what? A. Bolts and cross bars.

Q. Which are accessible from the outside or inside? A. Inside.

Q. You are going to sail on this vessel on her out-
83 ward voyage? A. Yes, sir.

Q. When? A. On Tuesday next.

Mr. Black reads deposition of—

ERNEST C. LEGGE, recalled on behalf of libellant, as follows:

Q. In the business that the *Carib Prince* was employed in September, 1893, was she carrying cargo for the general public, whoever wanted to ship on her, or not? A. Yes.

Q. She was? A. She was.

Q. And did you on arrival at New York file in
84 the Custom House a manifest of the cargo you had on the voyage in question? A. Yes.

Q. Did that contain a true statement of what cargo you had on board? A. To the best of my knowledge.

Q. You intended it to be true, and you swore it was true, didn't you? A. Yes.

Q. Did you have copies of the bills of lading of the cargo which was on board? A. Yes.

Q. And those were what are called ship's copies, weren't they? A. Yes.

Q. What did you do with those on arrival in New York? A. I don't know what was done.

Q. Did you give them up to the ship's agents or consignees here, or did you keep them yourself? A. I gave them to the agents here in New York. 85

Q. Who attended to the ship's business? A. Yes.

Q. Was there a cargo list prepared for the agents, or did they make that list up? A. Prepared.

Q. Prepared for them? A. Yes.

Q. And checked off by anybody within your knowledge? A. No.

Q. You don't know whether it was or not? A. No.

Q. You testified here before and identified certain of the bills of lading which your counsel, Mr. Kirlin, produced? A. Yes.

Counsel for libellants calls upon counsel for the respondents or claimants to produce the bills of lading of the shipment in the suit of Middleton. 86

Counsel for the claimants regrets that he is unable to do so, as he has not any copies and does not know anything about the bills of lading.

Q. Please look at the bill of lading I now produce and see if you recognize that as a bill of lading of part of the cargo on this voyage of the *Carib Prince* (paper shown witness). A. Well, I can only say by the date of the voyage, that is all.

Q. Don't you recognize the signature of the agents? A. Yes, it is signed by the representatives of the Trinidad Steamship Line in Trinidad. 87

Q. Were those the same parties that signed all the bills of lading for the cargo? A. Yes.

Q. (Paper shown witness.) Will you please look at the paper shown you and say what that is? A. It is the manifest.

Q. Signed by you? A. Signed by me.

Q. And sworn to by you? A. Yes.

Q. Does the shipment to Middleton of 63 bags of cocoa, 54 bags, 15 bags, and six bags of cocoa appear on there?

Objected to as incompetent, the document being the best evidence.

88 A. Yes, it appears here.

Q. And was that cargo on board? A. Yes.

Counsel for libellants offers in evidence the bill of lading which the witness identifies.

Objected to as immaterial, irrelevant, and not being shown to have been signed by any person having authority to bind the ship by admissions.

Said paper is marked Libellants' Exhibit 1 of June 1, 1894, in Middleton suit.

Libellants' counsel also offers in evidence the ship's manifest in the same case.

Said paper is marked Libellants' Exhibit 2 of
89 June 1, 1894, in the Middleton suit.

Q. Please look at the bill of lading I now show you, and say whether all you have said in respect to the previous one in the Middleton case is not equally true as to that? (Paper shown witness).

Objected to as indefinite. Counsel ought to ask the witness the question.

Q. Please look at the bill of lading I now produce and see if you recognize that as a bill of lading of part of the cargo on this voyage of the *Carib Prince?* A. Yes.

Q. Don't you recognize the signatures of the agents? A. They are the signatures of the com-
90 pany down there that is doing the business for the Trinidad Steamship Company.

A. Are those the same parties that signed all the bills of lading for the cargo? A. I suppose so.

Said bill of lading is offered in evidence.

Objected to on the ground that it does not appear that it is signed by anybody authorized to bind the steamer by admissions.

Said paper is marked Libellants' Exhibit 3 of June 1, 1894, in the Gillespie case.

Q. Do you not find on this same manifest the entry in respect to the 75 bags of cocoa marked

"A. G. C." and "G. B. C.," mentioned in this bill of lading, consigned to order, and shipped by Andre Guiseppi & Co.? 91

Objected to as incompetent.

A. Yes.

Said invoice offered in evidence by counsel for libellants in the Gillespie case.

CROSS-EXAMINATION read by Mr. Kirlin:

Q. Who tallied the cargo in down there in Trinidad? A. The ship's officers.

Q. Did you sign any bills of lading yourself? A. No.

Q. Did you make any check of the bills of lading with the officers' receipts? 92

Objected to as immaterial and incompetent.

A. No.

Q. Did you check the manifest with the receipts? A. No.

Q. Who made up this manifest? A. Made up in the office of the ship's agents in Trinidad.

Q. Have you ever verified the correctness of the recitals in this manifest in any way? A. No.

Q. How, then, are you able to swear positively that this cargo was on board? A. I take it for granted

Q. You have not any actual knowledge about it, have you? A. No. 93

Q. The manifest was presented to you—

Objected to as leading.

Q. This manifest was made up by what persons? Give me the names. A. I don't know who it was made up by—by what particular person.

Q. In what office? A. Made up in the office of Turnbull & Stewart, in Trinidad.

Q. Who were Turnbull & Stewart? A. They do business in Trinidad—the company's business.

94 Q. What company? A. The Trinidad Steamship Company.

Q. And they make up this manifest and hand it to you? A. Yes.

Q. And you have not any knowledge as to whether it is correct or not?

Objected to as leading and improper.

A. I take it for granted.

Q. Except that they make it up? A. That they make it up, yes.

Q. You have to swear to a manifest every time you come into port, don't you? A. Yes.

Q. Every other captain does? A. Yes.

95 Q. Is it possible for a captain to verify every manifest he has to swear to? A. No, I can't say that it is.

Q. You could not do it unless you tallied in every bale of cargo and every package yourselt, could you? A. No; unless I——

Q. In order to have knowledge on the subject? A. Certainly; I would have to take it for granted. .

Q. In order to have actual knowledge you would have to tally in every package of cargo yourself, wouldn't you? A. Certainly I would.

Q. And you signed to this and swore to this on the representation of other people that it was correct? A. Yes.

96 Q. And that is all the knowledge that you have about it? A. That is all I have. Well, on the manifest, I only have to do with the passengers and ship's stores that I have to know is correct—the bonded stores and things that go under seal—a true statement of passengers in entering the port.

Q. Have you ever seen those bills of lading that have been exhibited to you to-day until you see them now? Those, I mean, that Mr. Black has produced to you? A. No; I have never seen those signed before.

Q. You have not any personal knowledge, have you whether the cargo mentioned in those bills of

lading was on board or not except what others have told you? A. What is that? 97

Q. You have not any personal knowledge that the cargo mentioned in those bills of lading was on board? A. No more than——

Q. More than that it appears on the manifest? A. Yes.

Q. You did not tally in cargo? A. No.

Q. Nor compared statements in the bills of lading with the mate's receipts? A. No.

Q. You have not any actual knowledge as to the correctness of those bills of lading? A. I have not.

REDIRECT-EXAMINATION read by Mr. Black:

Q. You have actual knowledge that you had cargo on board, haven't you? A. Yes. 98

Q. You had actual knowledge of your cases of Angostura bitters on board? A. Yes.

Q. And you had a mate there whom you put in charge of the duty of tallying in the cargo, didn't you? A. Yes.

Q. And part of his duty was to sign receipts for the cargo as it came on board, wasn't it? A. Yes.

Q. And you had every opportunity of examining those receipts and comparing them with the manifest, if you so desired, hadn't you? A. No; it is not so.

Q. You had the opportunity, had you not? A. No; I had no opportunity. 99

Q. Did you ever make a request for an opportunity?

Objected to, as the receipts would not be kept by the mate.

A. No.

Q. Did you ever ask for an opportunity to let you see the mate's receipts? A. No.

Q. Could you have had them if you had wished it? A. No, I could not. They were sent ashore.

Q. But you were in the habit of going to the agents on shore, weren't you? A. Yes.

100 Q. You could have got those receipts and compared them with the manifest, if you had so desired, could you not? A. No.

Q. Why could you not? A. These manifests are made up in Trinidad generally before the receipts are returned to the shore.

Q. Before the receipts are returned? A. Yes.

Q. What of that? Couldn't you have examined the receipts when they were returned? A. Yes; but they are not ashore before the ship leaves the place.

Q. Was the manifest aboard before the ship leaves the place? A. Yes.

Q. And if they are not ashore before the ship leaves, and the manifest was aboard before the ship
101 leaves, why couldn't you have examined them?

Objected to as cross-examination.

A. I don't know what you mean.

Q. You mean to say that, if you had wished to do so, it was impossible for you to have compared the entries in the manifest with the mate's receipts?

Objected to as cross-examination.

A. I don't understand what you mean.

Q. I ask you to answer my question. Do you mean to say that it was impossible for you to examine the mate's receipts and compare them with the manifest, if you desired to do so? A. If I was supposed to detain the ship for it, yes.

102 Q. If you had wished, could you have done it? A. If I wished to detain the ship for it.

Q. You had opportunity, had you not, at the time of the discharge of cargo, to ascertain every package that was on board the ship, if you had wished to do so—to do so when the ship was unloaded, when cargo was taken out, if you had wished to find out the fact? You could have done so if you had wanted to? A. I could if I had wanted to.

Q. You have done the business in the way that is customary in all shipping lines of which you have any knowledge?

Objected to.

A. No. Different ships do business different ways. 103

Q. So far as you are concerned in the ship *Carib Prince*, wasn't this the way in this particular voyage that business was done on all the voyages?

Objected to as immaterial.

A. I suppose it was.

Q. And it is the way that you are continuing to do it now?

Objected to as immaterial.

A. I have not made a voyage since then.

Q. But you have done it on other ships, haven't you? A. No. 104

Q. No other ships? A. No.

Q. Not since then? A. No.

Q. You have been ashore all the time? A. I have been home.

Mr. Black reads deposition of

EDWARD KEEYS, taken in behalf of the libellants, as follows:

Q. You are the chief engineer of the steamship *Carib Prince*, are you not? A. Yes, sir.

Q. How long have you been connected with her? A. Ever since the engines were first put into the ship. 105

Q. And were you on her on her trip from Trinidad in September of this year? A. Yes, sir.

Q. Describe the dimensions and the character of the construction of the tank in the fore peak of the steamer? A. The dimensions I haven't got.

Q. Give them as near as you can. A. The tank will be about 21 feet high from the forefoot of the ship to the top, across the top at the widest part would be 38 feet—that is the after side of it, the forepart of the tank it runs to nothing, in fact, it is almost triangular.

106 Q. Taking the perpendicular of that triangle, from the bulkhead to the bow, is how long on the top of it? A. I should say about 12 feet.

Q. And what is its capacity in gallons or tons of water? A. Eighty-three tons.

Q. How is the water got into it? A. Pumped in by a donkey pump.

Q. Through what? A. Through a hose pipe connected with the wash deck pipe and leading in through a tank filling pipe.

Q. That is a permanent pipe attached to the cover? A. Yes, sir.

Q. And running up to the main deck? A. Yes, sir.

107 Q. Is that the same pipe by which it is emptied? A. No, sir; it is emptied by a cast iron pipe leading from the tank to the engine-room, in connection with the ballast donkey, and controled from the engine-room.

Q. How long a time does it take to fill that tank? A. About four and a half hours.

Q. How long does it take to empty it? A. About one hour and a half.

Q. When was it first filled, to your personal knowledge? A. On the night of the 3d of September.

Q. At whose order? A. The chief officer's.

Q. When was it emptied? A. On the morning of
108 the 5th, between six and seven o'clock.

Q. What was the reason for emptying it? A. A broken rivet, and water coming in through the bulkhead and damaging the cargo.

Q. How was that first discovered? A. By the decrease of the water in the tank on the sounding.

Q. Who was it first discovered it? A. The carpenter.

Q. How did he discover it? A. By sounding the tank to see what depth of water there was in the ship.

Q. Had it been sounded previously to that to as-

certain whether it was full or not? A. Not to my 109
knowledge.

Q. How was it ascertained that it was full? A. By the air blowing out of what we call the air pipe funnel, as the water fills the space the air escapes by that.

Q. From the time it was filled down to the time the carpenter took the soundings on the morning of the 5th, had there been soundings taken, to your knowledge, in this tank? A. Not to my knowledge.

Q. What was the report of the carpenter as to the condition of the tank? A. I couldn't tell you.

Q. What did you first do yourself in reference to this tank after the report of the carpenter? A. Went down in the hold to have a look at it. 110

Q. Didn't you sound the tank? A. No, sir.

Q. Whom did you go down with? A. I went down with myself.

Q. Did you find any one there? A. The chief officer.

Q. Was he the only one there? A. The only one I saw there.

Q. Did he call you? A. No, sir; I don't think he did.

Q. How did you happen to go down? A. I was called by some one but I don't remember who it was.

Q. Had no report been made to you of the situation of things? A. No, sir.

Q. How did it come to your knowledge? A. I had 111
been called and told that this was the case; I couldn't say who it was.

Q. You got down in the No. 1 hold? A. Yes, sir.

Q. What did you find there? A. Water rushing out of the bulkhead in against the cargo.

Q. Did you find it as soon as you got down? A. No, there was a lapse of a few minutes or seconds, I couldn't say which.

Q. Did you go down in the lower No. 1? A. Yes, sir.

Q. Was that full of cargo? A. No, sir.

112 Q. Was there head room for you to stand up on the cargo? A. Yes, sir.

Q. Did you hear water swashing around there? A. Yes, sir; And saw it, too.

Q. Was it on top of the cargo? A. No, sir.

Q. How could you see it then? A. In the space between one division of cargo and the other; there was three different packages of cargo.

Q. And separated into different lots by what? A. Cocoa nuts, Angostura bitters and cocoa beans.

Q. Were they divided into lots in the stowage of them, so that one was separated from the other? A. I couldn't exactly tell you, but there was space there, for I could see the water washing about.

113 Q. Did you form any opinion as to how high the water was? A. Close upon three feet in the after part.

Q. That was enough to cover the floor, the three feet in the after part wouldn't leave it bare at the forward end, would it? A. No, sir.

Q. When was it that you first discovered that the bulkhead was leaking? A. The morning of the 5th.

Q. How did you find out that the bulkhead itself was leaking? A. We started to look for where the water was coming from, we knew it was escaping from the tank, and the water couldn't get out of the tank without a leak.

Q. Did you hear anything that located the point
114 where the leak was? A. Not exactly located the point; we formed an idea from the sound where it was.

Q. From the gurgling of the escaping water? A. Yes, sir.

Q. And then you moved the cargo so as to get a sight of it? A. Yes, sir; there was a whole partly open, and there was a bore of water coming; the hole was full of water and it was spurting out with considerable force, showing there was a big head of water behind it.

Q. The first thing done to stop this leak was

what? A. Drove the rivet back and put in the wooden plug. 115

Q. After that how was the hold emptied of water? A. By the ballast donkey.

Q. Did you see the cargo when it came out in New York? A. Some of it.

Q. Did you see the cargo that came out of No. 1? A. Saw it in the hold.

Q. Did you take any account of the number of packages that were damaged? A. No.

Q. That bulkhead, as I understand, is made of sheets of iron or steel bolted together, forming the entire face, isn't it, and reinforced by some angle iron or T-iron to give shape and stiffness? A. Yes, sir.

116

Q. And that rivet that was broken was located where on that bulkhead? A. About three or four feet from the bottom of the tank, and eighteen inches to two feet from the ship's side.

Q. You are now speaking of the tank? A. Yes, sir; of the bulkhead.

Q. Are you speaking of the tank side of the bulkhead or the No. 1 side of the bulkhead? A. As regards the depth, the cargo side of the bulkhead.

Q. How high above the level of the floor in No. 1 was this rivet which was broken? A. Three or four feet.

Q. Was it one of a lot of rivets forming the fastening for these plates in that location—were there a great many other rivets close by it? A. About six. 117

Q. How far apart do those rivets run? A. Three to four inches, horizontally.

Q. How far in the perpendicular? A. About two feet from any other seam of rivets.

Q. On the other seams were the rivets spaced about the same distance apart? A. Yes, sir; ordinarily.

Q. And about how far do you think the rivets were apart? A. Three to four inches.

118 Q. And that is the only rivet that you found was in any way defective? A. At that time; yes, sir.

CROSS-EXAMINATION read by Mr. Kirlin:

Q. Were these rivets rivets joining the plates of the bulkhead together? A. No, sir.

Q. How far away from these rivets was there any join in the bulkhead plates? A. About six inches below it, and about two feet six above the knee tie.

Q. Please explain to us what this row of rivets was for? A. What is termed a knee tie, a stiffening knee to support the bulkhead.

119 Q. Where is that tie? A. Tight to the ship's side on a fore and aft beam, and extends at right angles across the bulkhead.

Q. How far? A. Two feet.

Q. How far does it extend up along the angle iron beam on the side of the ship? A. About the same distance.

Q. Of what is that composed? A. Plate iron or steel, with a reverse angle bar to it.

Q. How thick is that? A. About $\frac{3}{8}$ of an inch thick.

Q. How wide is the strap? A. Do you mean the knee?

Q. I mean the strap that the knee tie is fixed on
120 to? A. That is a three and a half inch angle bar.

Q. And what is the knee itself? A. Plate iron.

Q. What is its shape? A. Triangular.

Q. What is it fastened to? A. Fastened to the ship's side in one case.

Q. Through the strap? A. Through the fore and aft beam.

Q. As I understand it, the knee tie is a triangular piece of iron with one edge turned up at right angles to the face of the tie, and that this angle bar, part of it, is riveted fast to the bulkhead, and that the other edge of it is attached to the beam of the ship, and that the rivet that broke was one of the

rivets by which this knee tie was fastened to the bulkhead? A. Yes, sir. 121

Q. Which rivet was it? A. One at the extreme edge of the bar, outer end of the reverse of the angle bar; it was the extreme end one of the lot; there are about six, I think.

Q. You said that this outer extreme end one was the only one you found leaking at that time? A. Yes, sir.

Q. Mr. Black asked you whether the plates of the bulkhead were not bolted together and you answered yes; I suppose you mean riveted? A. Yes, sir.

Q. What is this chain locker made of? A. Iron.

Q. Is it water tight, too? A. As far as I can say, it is. 122

Q. Is it riveted on to the bulkhead? A. Yes, sir.

Q. How is it attached at the bottom; is it connected with the tank? A. I couldn't say for certain, but I should say it was angle-barred all around.

Q. Is it all iron? A. It is all iron.

Q. And the plates are all riveted the same as the bulkhead? A. All riveted the same as the bulkhead.

Q. Is this collision bulkhead clear past the bend of the bow, or is it right in the bend of the bow? A. Just on the radius of the bow; goes right across where she takes the sweep for the bow.

Q. If she was headed into a heavy sea, would there, or not, be any considerable pressure on the sides of the ship just about where this tie is? 123

Objected to as incompetent, irrelevant and immaterial.

A. Yes. I should say there would be a strain on the ship's bow caused by the resistance.

Q. Isn't there an expression that is used for that among engineers? A. I can't say that there is.

Q. Is it sometimes called "panting"? A. I believe so, but it is not used now.

Q. Do you know what became of the head of the

124 rivet that was gone? A. Yes, sir; the chief officer took it.

Q. Did you see it picked up? A. I did.

Q. Where was it found? A. On one bag of cocoanuts.

Q. Where with reference to the hole? A. Right down under it.

Q. How far away from it? A. I couldn't exactly say the distance now; I didn't take that much notice. I saw it picked up; that is all.

Q. Have you that rivet head? A. I have not, sir.

Q. When was it picked up? A. After the water was stopped, after we got the water stopped.

125 Q. Is that the rivet head that you saw picked up off the bag (producing same)? A. Yes, sir.

Mr. Kirlin: I offer that for identification.

It is marked Claimants' Exhibit 6.

Q. Were all the rivets in that knee tie countersunk on both sides? A. To the best of my knowledge.

Q. Were they countersunk on the hold side? A. Yes, sir.

Q. And this broken piece indicated that it had broken in the countersunk part of the rivet? A. Yes, sir.

126 Q. Have you your log book for the voyage from Trinidad to New York? A. Yes, sir.

Q. What entries have you got for the 20th, 21st and the beginning of the 22d of August, during the time the steamer was in the hurricane?

Objected to as immaterial and incompetent.

Q. Were you subpœnaed to produce your log? A. Yes, sir.

Q. Where is that subpœna? A. Here it is.

Mr. Kirlin: I offer the subpœna in evidence.

It is marked Claimants' Exhibit 7.

Q. Did you bring the log here pursuant to that subpœna? A. Yes, sir. 127

The entries in the log are as follows:

" Engines racing the whole of the 20th.

" 21st. Engines slow; 12.10, high seas breaking over " ship on port beam, supplying oil for W. C. and " oil bags; storm increasing and sea rising.

" Heavy sea and gale on port beam, ship taking " very heavy water on board.

" 5.30, half speed. Hurricane moderating a little.

" Wind and sea moderating. Engines racing.

" 22d. Full speed at 12.15. Heavy list to star- " board. Working coal of starboard bunkers.

" H. & M. Guides warm.

" Engines racing a little. 128

" Steaming badly.

" Steaming better."

Q. What number of revolutions does the vessel make at full speed per minute? A. 73 and 74.

Q. What was she making during the 20th? A. 68 and 67.

Q. What did she make during the 21st? A. 27.

Q. Have you got a record of what distance she made on the 21st? A. No observation.

Q. What number of revolutions did she make on the 22d? A. 64 in the morning and 67 at night.

Q. When did you ease down; at what hour? A. Ten minutes past twelve on the morning of the 21st.

Q. When did you start again full speed? A. At a quarter past twelve on the morning of the 22d. 129

Q. What was the condition of the weather during those two days? A. Hurricane.

Q. Was it continuous? A. Yes.

Q. Did you examine the ship after the hurricane? A. I did, sir.

Q. Where? A. Fore peak.

Q. Where else? A. Engine-room, stoke holes in the sides of the ship and the tank bilges.

Q. Did you go down into the tank in the fore peak? A. Yes, sir.

130 Q. What time of day? A. Between nine and ten o'clock in the morning.

Q. Did you make an examination of the interior of the tank? A. Not a practical examination. I made an examination just to satisfy myself, to have a look at the formation of the tank principally; it was the first time I had seen it; I didn't go with the intention of examining whether there was any damage or not, but I made that my business when I was down there.

Q. Did you examine to see whether there was any damage? A. Yes, sir.

Q. Did you look at the collision bulkhead? A. Yes, sir.

131 Q. Did you look at the knee tie? A. Yes, sir, wherever there were rivets.

Q. Was there any coating or wash on the forward side of the bulkhead? A. Yes, sir, a coating of Portland cement.

Q. Was that over all the rivets? A. The rivets and the bulkhead as well.

Q. Did you notice that any rivets were started on the inside? A. I couldn't tell that any had been started.

Q. Had the cement been started? A. Not that I could see.

Q. You say you examined wherever there were rivets on the inside of the tank? A. Yes, sir.

132 Q. How long were you down there? A. Upwards of an hour.

Q. Do you know whether the rivets are countersunk on the tank side of the bulkhead or not? A. Yes, sir.

Q. Did you go in the No. 1 hold at all? A. I was there after the cargo was out?

Q. Did you examine the bulkhead there? A. I saw it tested by the surveyor.

Q. Where? A. In New York.

Q. I meant in Trinidad after the storm, before you started back to New York? A. Oh, no, sir.

Q. You were not in the lower hold then? A. Not in the lower hold then. 133

Q. If there was any defect in that rivet, which has been marked Claimants' Exhibit No. 6, before it fell off on to the bag of cocoa, would it have been discoverable by inspection from the No. 1 hold, looking at it as it was countersunk in place?

Objected to as immaterial and incompetent.

A. No, sir.

Q. Why not? A. Because the head of the rivet is hammered close to the face of the plate.

REDIRECT-EXAMINATION read by Mr. Black:

Q. On what day was it that you went down into this tank first after this storm? A. On the morning of the 22d of August. 134

Q. The vessel was then at sea? A. Yes, sir.

Q. Did anybody go with you? A. No, sir.

Q. And it was your first visit to the interior of the tank? A. Yes, sir.

Q. How did you get down into it? A. Through a manhole door.

Q. Was there a ladder to go down into it? A. Yes, sir; three ladders.

Q. Inside? A. Inside.

Q. Permanent? A. Permanent ladders.

Q. Did you carry lights with you? A. I did.

Q. In what shape? A. In the shape of a torch and a lantern. 135

Q. And you say you found it all lined with Portland cement? A. Yes, sir.

Q. How thick was that lining? A. A heavy wash —washed with a solution of cement in paste form.

Q. What would you take that to mean in thickness, a heavy wash? A. It materially differs; depends upon the surface it is put on. Put a coat of cement about one-sixteenth of an inch thick, and about the rivets would be thicker and clumsier.

Q. You found nothing to indicate any starting of the cement? A. According to appearances.

136 Q. Well, you saw it and you are telling us what you saw? A. Yes, sir.

Q. Was there cement on all the sides of the tank as well as the bulkhead? A. Yes, sir.

Q. And on the floor of it? A. There is no floor in it.

Q. It comes down to a flat surface on the bulkhead side, doesn't it? A. No, sir; it is wedge-shaped at the bottom of the ship.

Q. Was that portion of the tank which formed the bottom of the tank also covered with cement? A. Yes, sir; not only with a wash but with a body of cement.

Q. Was the top of it, which is the underside of
137 the between-decks there, also washed with cement? A. I am not sure of that.

Q. Could you by means of these ladders examine every portion of that interior? A. Yes, sir; and without the assistance of the ladders.

Q. Why, part of it is twenty feet high, isn't it? A. Yes; but you have got intermediate stringers that you could stand on.

Q. This particular beam to which this angle iron is attached is inside of this tank? A. Yes, sir.

Q. At what height above the bottom of the tank is that beam? A. From the ship's bottom?

Q. Yes? A. Six feet or more.

Q. Did you look at that beam at all? A. I was
138 on top of it.

Q. Was that also covered with cement? A. Yes, sir.

Q. Was the cement perfect there? A. Apparently.

Q. I understand you that that angle iron which connects the beam with the bulkhead is riveted to the bulkhead and to the beam, but not to the side of the ship? A. No, sir.

Q. Does that beam run athwartships? A. Fore and aft.

Q. How many of those beams are there in that tank at that height? A. Two.

Q. One on each side? A. Yes, sir.

Q. And an angle iron on each side? A. Yes, sir. 139

Q. Is one of the angles of that angle iron a right angle? A. Yes, sir.

Q. That right angle comes at the junction of the bulkhead with the beam, doesn't it? A. Yes.

Q. And the rivet which was gone, was it at the right angle end of the angle iron, or was it at the other angle end? A. At the extreme end of the angle iron.

Q. That was not at the right angle end? A. No, sir.

Q. Is the right angle end of the angle iron nearest the centre of the ship, or nearest the side of the ship? A. Nearest the side of the ship.

Q. So that the rivet which was gone was nearest 140 to the centre of the ship? A. Nearest to the centre of the ship.

Q. Were you in the vessel at the time the survey was held on her after her arrival in New York? A. I was.

Q. At that time there were other rivets discovered weeping, weren't there? A. A considerable number of them.

Q. There was also another rivet found gone? A. Yes, sir.

Q. Where was the one that was found gone located? A. Next to the one that was gone.

Q. Where were the weeping ones? A. On the other side of the ship.

Q. How many weeping ones were there? A. Five 141 or six.

Q. How many did you find with heads gone and holes there? A. Only the one.

Q. Didn't you find another rivet hole besides the one you plugged up at sea? A. No, sir.

Q. Are you sure of that? A. Yes, sir.

Q. Have you any record of what you did see when the survey was held? A. No, sir.

Q. You made no memorandum of what you saw? A. No, sir.

Q. I understand that at the time you went into

142 the tank you confined your examination entirely to the tank sides, and didn't go into the No. 1 hold at all at that time? A. Couldn't get into No. 1 hold for the cargo.

Q. And that after you got to your destination and delivered your cargo, you then did not go into No. 1 to make any examination of that bulkhead? A. No, sir; didn't think it necessary.

Q. Are you familiar enough with qualities of iron to say whether this rivet is of good quality or not (Claimants' Exhibit 6)? A. I am, sir.

Q. Is it good or not? A No, sir.

Q. What is its defect in your judgment? A. Inferior iron, short and brittle, without a fibre.

143 Q. Has that been annealed? A. Yes, sir.

RECROSS-EXAMINATION by Mr. Kirlin:

Q. Might not this condition of fibre have been produced by too much hammering when it was annealing? A. Yes, sir.

Q. When a line of rivets are put in in construction they usually work on three at a time, do they not? A. Yes, sir.

Q. And every time they put in a new one they tighten the one behind it, do they not. A. They tighten the second one behind it; yes, sir.

Q. As the iron is cooling, if the second one behind
144 is hammered too much, that will produce a crystalline character in the iron, will it not, and will give it the appearance of being short and brittle? A. Yes, sir.

Q. That is the appearance that this had? A. Yes, sir.

Q. So that it would be difficult to tell from its appearance now whether it was originally good or not? A. The condition it is in you could not tell well; it is rusted up and you cannot see the fibre.

Q. When the tank was filled, do you know whether the manhole was caulked or not? A. No,

sir; the manhole is not caulked; the manhole is 145
put in with a water and steam-tight joint by means of six bolts.

Q. You know that that was water tight before the tank was filled? A. Yes, sir.

By Mr. Black:

Q. Do you notice that this rivet has evidently been headed up one-sided, that is, the top of it has not spread evenly over the portion which has been countersunk? A. Yes, sir.

Q. Can you tell by looking at the rivet whether it has been hammered while it was cold or hot, or half cold or half hot? A. I cannot tell.

Q. If it is properly heated and hammered in that 146
condition the iron spreads evenly, doesn't it? A. Not in all cases.

Q. In what case might it not spread evenly? A. A man might hit it on the wrong side.

Q. If an expert riveter were doing the work it would be so, would it not? A. Not in all cases.

By Mr. Kirlin:

Q. Isn't there an inspection of rivets to find out whether they are properly put in before they are passed? A. There is an inspection of rivets to find out whether they are tight before they get paid for them.

Q And if the inspection didn't discover a defect of 147
that sort it wouldn't be likely to exist, would it? A. You couldn't see the other side. The holes might not be even.

Q. There might be a little difference between the distances without there being any damage done, might there not? A. Yes, sir. That would indicate (the exhibit) that one end of the rivet had been up and one down.

By Mr. Black:

Q. Does not that mean that the holes have not been bored true? A. That is the exact meaning of it.

148 Q. Doesn't it indicate that the drifting iron has not been used under such circumstances? A. No, sir.

Q. If the drifting iron was used the holes would come opposite, would they not? A. Would spring into shape, certainly—spring the plate—spring the two faces open.

Q. Did you put the plugs in these holes? A. I was there when it was put in.

Q. Did you see the holes? A. Yes, sir.

Q. Did the holes come true? A. The holes did not come true; they cut them out so they would come true.

Q. Who did? A. The boilermakers.

149 Q. When? A. When the repairs were made.

THOMAS CONGDON, being duly sworn, examined as a witness for the claimants, testifies:

By Mr. Kirlin:

Q. You are a Lloyd surveyor in this port? A. Yes, sir.

Q. Also a shipbuilder? A. Brought up as one.

By the Court:

Q. Iron shipbuilder? A. Iron and wood.

Q. You know all about iron ships—the build of
150 them? A. I think so.

By Mr. Kirlin:

Q. How long have you been a Lloyd surveyor in this port? A. About thirty-eight years.

Q. Did you survey the *Carib Prince* at the end of her voyage here in September, 1893? A. Yes.

Q. What was the trouble? A. There had been a leak in the forepeak bulkhead.

Q. Did you see the hole? A. I saw the rivets that had been started. I didn't see the rivets taken out.

Q. Was one gone? A. One was gone.

By the Court:

151

Q. And others—— A. Strained and started and had been leaking.

By Mr. Kirlin:

Q. How many others? A. Five or six.

Q. These were in the strap, were they, in the reinforcing brace? A. There were two or three in the vertical stiffening bar, we call it, and two or three, or three or four, in an angle iron attaching a stringer plate to the bulkhead, or bulkhead to the stringer plate.

Q. Was the other end of the rivet knocked out? A. No, the after end was out; the remaining end was in the hole. 152

Q. Did you notice any irregularity about the holes for that place? A. I did not.

Q. Was it repaired at that time? A. No; the repairs were deferred until the first or second voyage after that. They did some little caulking temporarily.

Q. What was done with the hole where the rivet was broken off? A. I think a bolt was put in there.

Q. Temporary repairs? A. Temporary repairs.

Q. Did you make further survey of her at a later day? A. At a later day, when the work was all completed, I made another survey; had the tank filled and tested, and it proved to be tight.

Q. Did you see the engineer on both occasions? 153
A. Yes, I think I met him on each occasion that I was involved.

Q. Did you hear anybody say anything about the holes being uneven? A. No, I did not.

Q. Who made the repairs? A. I could scarcely tell you that.

Q. Handren & Robins? A I really don't know.

Q. Do you know what the requirements of Lloyds are as to passing a tank before the vessel is classed? A. I think I do, yes.

Q. Do you know?

Objected to as immaterial.

154 A. I know just exactly what they are.

The Court: There may be somebody there who didn't test it right.

The Witness: I am sure they wouldn't do that. I am sure it was done.

Q. What are the requirements of the rule?

The Court: She passed Lloyds I know, but what examination was made I don't know.

The Witness: The ship wouldn't have been classed unless it had been complied with.

The Court: Unless somebody had certified it had been complied with.

The Witness: Yes, sir.

155 Taken subject to objection.

Q. What was the test required? A. When the vessel is built and the tank completed, it is filled with water to the very top and a stand pipe is put in on the top, five or six or seven feet high, and the tank is filled, and when the water comes over the top of that pipe it is said to have its pressure on, which tests all the workmanship and material and everything in connection with that tank and proves it fit to hold and carry this depth of water. That is about the whole thing.

Q. Could a vessel have been classed unless that was done?

156 Objected to as immaterial.

Q. What class of vessel is the *Carib Prince?* A. She is a very first class vessel; I haven't seen a better one of her kind.

Q. Have you examined the workmanship about her? A. I have been on board of the ship two or three times.

Q. What do you say as to the workmanship? A. I say it is very good.

Q. Do you know the builders? A. If you name them I might know their reputation. I know them all over there.

Q. Shaw Brothers? A. Yes, men of good reputa- 157
tion.

Q. Can you form any judgment as to what was the cause of the leak that you saw when you surveyed the vessel? A. No, I do not, really; I haven't formed any judgment on that at all.

Q. Did you notice from which end of this strap the rivets appeared to have started first, whether the parts towards amidships or the part towards the side of the ship? A. I think the side of the ship, as far as I can remember.

CROSS-EXAMINED by Counsel for Libellants:

By Mr. Black:

158

Q. What was the date of your first visit to this steamer for the purpose of looking at this bulkhead? A. In September, last year.

Q. Did you make a record of your inspection at that time? A. I made a short report of it.

Q. To whom did you make the report? A. To the agent, Mr. Seager, only half a dozen lines.

Q. Have you got that report with you? A. No.

Q. Have you a copy of it with you? A. I have a copy in the office.

Q. With you? A. No, I have not.

Q. Do you distinctly recollect how many rivets you found missing there? A. I distinctly recollect one being partly gone, the one I spoke of just now, and the others I stated in a general way; two or 159
three in the vertical bar and three or four or five——

Q. Absolutely gone? A. No.

Q. How many did you notice were absolutely gone? A. One partly gone.

Q. Only one partly gone? A. That is all I saw.

Q. And part of the iron was still in the hole? A. Part of the iron was still in the hole.

Q. Did you notice any wooden plugs in any part of the bulkhead at that time? A. Not when I visited the vessel, not on my visit.

Q. Was there any cargo in that hold when you

160 visited it? A. Not enough to prevent my seeing the bulkhead.

Q. Was there any cargo there? A. I could scarcely tell you; I don't quite know; I could see near the whole of the bulkhead.

Q. You didn't see the whole of it? A. I think I must have done so.

Q. Was there any cargo there? A. I couldn't tell you.

Q. If the cargo was there it would prevent your seeing some? A. There might be some cargo lying on the top of the tank, but not enough to prevent my seeing the bulkhead.

Q. Did you go into what you call the collision
161 compartment? A. I went on top of the tank in No. 1 hold.

Q. Has the tank got a top in No. 1 hold? A. Yes, the tank has.

Q. Is that a ballast tank that runs the length of the ship or the tank in the forepeak you speak of? A. The No. 1 tank, which is not the forepeak tank at all.

Q. I am asking about the forepeak tank. Did you examine the bulkhead of that? A. I had to go into No. 1 hold to do that, I tell you.

Q. Were you in the forepeak as well? A. No.

Q. You were not on top of that tank, were you? A. No. That is the upper deck, you know.

162 Q. Are you sure of that? A. Yes.

Q. Isn't it the between-decks? A. No.

Q. When you got into No. 1 hold was there cargo there? A. There may be some cargo.

Q. Was there; do you know whether there was? A. I couldn't tell you; I do not know what was in the hold of the ship; I didn't go there to see cargo; I went to see the bulkhead.

Q. Did you go into the lower hold or in the between-decks of No. 1? A. There is no between-decks of No. 1; she has got beams there, you know.

Q. How many rivets did you notice that were defective? A. Just as I have told you; two or three I

think in the vertical bar, and three or four or five in 163
one of the side stringers connecting it to the bulkhead. That is all I have a recollection of.

Q. What was the nature of the defects in the vertical bar? A. The rivets were started, and in the vertical bar was the one that was partly gone.

Q. What do you call the vertical bar of that bulkhead? A. The stiffening bar.

Q. And the stiffening bar and vertical bar are the same thing? A. Yes, quite so.

By the Court:

Q. When you went on with the examination was your attention called to the hole where the rivet was? A. I saw it. 164

Q. Your attention was called to it? A. I could see it any way.

Q. Did anybody call your attention to it? A. I don't know that they did. I saw it.

Q. So you can swear the rest of the bolt was there? A. In the hole.

Q. In the hole of the rivet? A. Yes; it was broken off.

Q. They swear here it had been plugged and they had driven in a plug? A. There was no plug when I saw it.

Q. There could be no plug if the bolt was there? A. It was too short to hold the plug.

Q. Are you sure the rest of the bolt hadn't got 165
out? A. I couldn't see any.

Q. And there was a bolt there? A. There was a bolt there.

Q. You didn't examine the part that was broken off of the bolt? A. No, sir.

REDIRECT by Counsel for Claimants:

By Mr. Kirlin:

Q. In putting a new rivet in holes where there has previously been a rivet do you know whether it

166 is usual to ream the hole before a new rivet is put in? A. The hole should be cleaned out or reamed out or rimed out, whichever it is.

Q. Is that the usual course? A. That is the usual thing to do.

Q. When rivets are put in first are they hot or cold? A. Red hot.

Q. If the holes are not true can you put in a full size rivet? A. If the holes are not true you can scarcely get in the full size rivet.

Q. When the rivet is hammered it fills up the whole place tight? A. It fills the hole.

RECROSS by Counsel for Libellants:

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By Mr. Black:

Q. Is it necessary to ream a hole if the vessel is almost new? A. It is necessary to clean out the hole.

Q. I said ream it out? A. Ream it out. Where water has been fastened to a hole and rust has set up you have got to ream out that to clean the hole.

Q. That is to take the shaving off to get a bright surface again? A. That is called cleaning out the hole.

Q. You could do it with a file as well as with a reamer? A. A file is not used for that purpose.

168 Q. I didn't say whether it was used; I said you could do it with that, couldn't you, for cleaning it? A. Of course you can do it.

By the Court:

Q. When the bolt was in there as you saw it could you tell whether those holes in the two places were true? A. Not unless the entire bolt was out.

Q. Therefore you don't know whether they were true? A. No, sir.

Mr. Kirlin reads the deposition of JOSEPH SHORT, 169
taken on behalf of the claimant, under a commission:

FIRST INTERROGATORY.—State your name, age, residence and occupation. What experience have you had in shipbuilding, and what, if any, connection had you with the building of the steamship *Carib Prince?* When and where was she built? A. My name is Joseph Short. I am thirty-seven years of age, and reside at Sunderland. I am a shipbuilder. I have had about twenty years' experience in shipbuilding. I took general management of the yard during the construction of the *Carib Prince.* She was built in the spring of last year at Pallion, Sunderland, by our firm, Short Brothers. I 170
gave practical supervision myself to the building of this and other ships. I am a practical shipbuilder. I had particular charge of the superintendence of this ship.

SECOND INTERROGATORY. State the position and construction of the said steamship's bulkheads and tanks. If you state that there is a bulkhead between No. 1 hold and the peak tank, constructed with iron rivets, state from what source said rivets were procured, and what, if any, means were taken to insure their soundness? A. There is a bulkhead dividing the fore hold and the fore peak tank. The rivets were procured from Samuel Tyzack & Company, Limited, Monkwearmouth, who supply nearly 171
the whole of the shipbuilders in the north of England. Rivets coming from Tyzack & Company are usually tested by bending them when cold and flattening them; and there was the general supervision of the foreman and myself in the usual way.

THIRD INTERROGATORY.—Describe particularly any tests made of the said rivets, bulkhead or tank, stating what part you personally took in such tests, what, if any, representatives of other parties were present, and what the condition of the parts tested appeared by such tests to be. What was the condi-

172 tion of the said bulkhead and rivets when the steamship left the builder's yard? A. I cannot remember that I made any particular test of the rivets in the bulkhead. Rivets coming from Tyzack & Co. are usually tested. We test rivets occasionally when they come into the yard into stock. We do not test any particular rivets in any particular job. But from time to time rivets are tested to see that the rivets supplied to us are of good and proper quality. The method of testing is by bending cold and flattening. I have already described that. The test is done in the blacksmiths' shop, and it would be reported to me if the rivets were not right. I do not remember testing any particular rivets in that bulk-
173 head. The condition of the said bulkhead rivets when the steamer left the builders' yard was perfect. The steamer was perfectly sound in every way when she left our yard. The bulkhead and tank were tested in the usual way by the rivet tester with a hammer, and then afterwards tested by Lloyds' representative and the owners' superintendent with water, as required by Lloyds' rules, and found perfectly in order.

FOURTH INTERROGATORY.—If you know of any other matter or thing to the advantage of the claimant in this action, state the same as fully as if you had been specifically asked about it? A. My opinion is that if this bulkhead is found leaking, it is utterly
174 impossibly for it to have occurred excepting through some damage or other that has occurred since she left our place. It is utterly impossible for it to have occurred in any other way except through damage. She might be damaged by a strain, or bad weather, or a blow.

Mr. Black reads cross-interrogatories as follows:

FIRST CROSS-INTERROGATORY.—What number of rivets were there in the fore bulkhead forming the after end of the fore tank? How many rows of rivets were there to each lap? How far apart horizon-

tally were the rivets? How far apart were the rows vertically and horizontally? A. The rivets are all spaced in accordance with Lloyds' rules for watertight work. There is one row of rivets to each lap. 175

SECOND CROSS-INTERROGATORY.—Describe the location of each rivet, and state through what it passed and how many of all said rivets you saw driven or drove yourself? A. I cannot describe the location of each rivet. Each rivet passed through two plates and angles. The riveting was properly done, in the usual way, and I exercised a general practical supervision.

THIRD CROSS INTERROGATORY.—Where were you when each of those particular rivets was driven or headed; if you say you were not all the time there present, state what portion of the time you were not present there at that bulkhead and how many of said rivets of said bulkhead you did not see driven, or what proportion? A. The bulkhead received my general supervision in the ordinary course, as a shipbuilder. 176

FOURTH CROSS-INTERROGATORY.—Did you use a drift pin or drift iron in constructing that fore tank? A. There would be a drift pin used in the construction of the fore tank, whenever necessary, in the ordinary course.

FIFTH CROSS INTERROGATORY.—Did you see a drift pin or drift iron used in constructing that fore tank? A. I did not, to my recollection, see the drift pin used in the construction of that fore tank. It was certain to be used when necessary. 177

SIXTH CROSS-INTERROGATORY.—Did any one use a drift pin or drift iron in constructing that fore tank? A. I should certainly say that the drift pin was used when necessary.

SEVENTH CROSS-INTERROGATORY. — How many times was the drift used in constructing that fore tank? A. I cannot tell how many times the drift pin was used in constructing that fore tank. It would be used whenever necessary, as I said before.

178 EIGHTH CROSS-INTERROGATORY.—What occasion was there for using the drift in such construction? A. The occasion for using the drift pin in such construction was to clean and smooth out the hole.

NINTH CROSS-INTERROGATORY.—Where were you when the drift was used in such construction? A. I could not possibly tell where I was when the drift pin was used in such construction. I would be about the yard somewhere.

TENTH CROSS-INTERROGATORY.—Were the rivets headed up cold or hot, or some cold and some hot? A. The rivets were headed up all hot.

ELEVENTH CROSS-INTERROGATORY.—Did you see all the rivets inserted in the rivet holes in that fore
179 tank? If nay, how many were inserted that you did not see? A. I did not see any of the rivets inserted in the rivet holes in the fore tank.

TWELFTH CROSS-INTERROGATORY.—How do know that all the rivets were hot? A. I know the rivets were hot because they could not be put in cold in that particular job, the size of the rivets being $\frac{3}{4}$-inch.

THIRTEENTH CROSS-INTERROGATORY.—Will hammering on a cold rivet make the iron cold short? A. If "cold short" means brittle, hammering on a cold rivet will make it so, if it is sufficiently hammered.

FOURTEENTH CROSS-INTERROGATORY. — Will a
180 buckled plate cause any strain on a rivet greater than one that is not buckled? A. A buckled plate will not cause any strain on a rivet greater than one that is not buckled, provided that the plate is close home to that to which it is riveted, at the point of riveting.

FIFTEENTH CROSS-INTERROGATORY.—What is the method you employed for bringing rivet holes which were not fair into line? A. The method employed for bringing into line rivet holes that are not fair is by clearing them out with a rimer.

SIXTEENTH CROSS-INTERROGATORY.—How many rivet holes did you see faired in the fore tank con-

struction? A. I cannot say how many rivet holes I saw faired in the fore tank construction. They were faired always when necessary. 181

SEVENTEENTH CROSS-INTERROGATORY.—Will you swear of your own personal knowledge that no rivet holes were fared in the fore tank bulkhead, braces, beams or angle irons, or either of them? A. I will not swear of my own personal knowledge that no rivet holes were faired in the fore tank, braces, beams or angle irons, or either of them. They were faired when necessary. Some would be faired.

EIGHTEENTH CROSS-INTERROGATORY.—What watch did you give to the riveting of the fore tank to prevent the rivets becoming cold short? A. I gave a general supervision to the riveting of the fore tank, as a shipbuilder, and by a practical foreman, Woolard. 182

NINETEENTH CROSS-INTERROGATORY.—(*Nil*).

TWENTIETH CROSS-INTERROGATORY.—If you saw that a rivet was being hammered too much what did you do? A. I never saw a hot rivet hammered too much.

TWENTY-FIRST CROSS-INTERROGATORY. — How many times have you been asked about the rivets used on the *Carib Prince* before you testified and by whom; have you ever written anything about the said rivets; if yea, to whom and when; produce a copy of what you wrote and say if you have done so and hand it to the Commissioner to be annexed to your deposition and say if you have done so? A. Before I testified I have been asked about the rivets used in the *Carib Prince* twice by the representatives of the *Carib Prince*. I have never written anything about the said rivets. 183

TWENTY-SECOND CROSS-INTERROGATORY.—Whose employment are you in; whose employment were you in while the *Carib Prince* was being built; what responsibility for bad workmanship or bad material in the *Carib Prince* exists in you or your employer or those you were employed by; if by

184 written contract annex a copy thereof and say if you have done so? A. I am and was at the time of the building of the *Carib Prince* a partner in the firm of Short Brothers. Responsibility for bad workmanship or bad material exists in me as a shipbuilder. This particular bulkhead was constructed in accordance with the specifications supplied to us by the owners, which they will produce.

Mr. Kirlin reads the deposition of HENRY WOOLARD, taken on behalf of the claimant, under a commission:

FIRST INTERROGATORY.—What is your name, age,
185 residence and occupation? What, if any, part did you take in the building of the steamship *Carib Prince;* what were your duties in regard to it, and what experience have you had in the examination of and building steamships and in riveting work? A. My name is Henry Woolard. I am twenty-nine years of age, and reside at Pallion, near Sunderland. I am foreman riveter at Short Brothers, and my duties with regard to the *Carib Prince* were to superintend. I have had eighteen years' experience in the examination and building of steamships and in riveting work.

SECOND INTERROGATORY.—What was the character of the workmen who put the rivets in the bulk-
186 head between No. 1 hold and the peak tank, and what was the quality of their work in this instance? A. The workmen employed to put the rivets into the bulkhead between No. 1 hold and the peak tank were first-class, competent men. They were well qualified workmen for this work, many of them having had thirty years' experience in riveting and holding up, independent of their servitude as boys in the shipyard. They do nothing but this class of work; water-tight work. We always employ the same set of men for water-tight work. It is important in this work that we should get the best

skill we can. I overhauled the work in this instance when it was completed, and it was a splendid job. 187

THIRD INTERROGATORY.—Describe particularly any examinations or tests made to your knowledge of the said work, the rivets, bulkhead or tank, stating what part you personally took, what the condition of the parts examined or tested appeared to be, what methods were used in making the examinations or tests, and how, if at all, did such methods differ from those usually employed in the examination or testing of steamships. What was the condition of the bulkhead when completed? A. I overhauled every rivet and tested it properly and sounded it properly with my testing hammer. After that, she was filled with water twice abreast the fore peak tank. Independent of that, I may state that Lloyds' surveyor and myself overhauled her, our two selves, between the putting in of the two waters. They filled her once for the shell, then Mr. Sharpe and I overhauled her, and then they filled her again for the owners' survey. When she was finished, I found her to be a splendidly finished job. The methods used in examination and testing were partly with a knife and partly with this hammer (hammer shown). After that the water. Those methods do not differ at all from those usually employed in the examination and testing of steamships. 188

FOURTH INTERROGATORY.—If you know of any other matter or thing to the advantage of the claimant in this action, state the same as fully as if you had been specifically asked about it? A. All I can say is that she was a splendid job, and she was accepted by Lloyds and also by the owners' surveyors. The compartment I tested was water-tight in every way. 189

Mr. Black reads cross-interrogatories and answers thereto, as follows:

FIRST CROSS-INTERROGATORY.—What number of rivets were there in the fore bulkhead forming the

190 after end of the fore tank? How many rows of rivets were there to each lap? How far apart horizontally were the rivets? How far apart were the rows vertically and horizontally? A. There were between 1,300 and 1,400 rivets in the fore bulkhead forming the after end of the fore tank. There was one row of rivets to each lap. The rivets were 3¼ inches apart from centre to centre, according to Lloyds' Rules. The rows were 3¼ inches apart in the seams, and 5¼ in the stiffening bars. The first tier from the tank top was doubled.

SECOND CROSS-INTERROGATORY.—Describe the location of each rivet, and state through what it passed and how many of all said rivets you saw
191 driven or drove yourself? A. I cannot state the location of each rivet. The rivets were in the ordinary places, according to Lloyds' Rules—all in their proper places when I examined them at the finish. I did not drive in any of the rivets myself. I superintended the work, and they were properly driven. I was constantly superintending. I was there throughout the working day. I gave my eight hours to that particular ship, and was going about the ship superintending at different parts constantly.

THIRD CROSS-INTERROGATORY.—Where were you when each of those particular rivets were driven or headed; if you say you were not all the time there present, state what portion of the time you were
192 not present there at that bulkhead and how many of said rivets of said bulkhead you did not see driven, or what proportion? A. I cannot say where I was when each of these particular rivets was driven or headed. I was constantly going backwards and forwards superintending all the work. I was superintending the work of the ship generally. I saw a large proportion of the rivets driven. My entire working day was given to the construction of that particular ship. I was superintending her throughout the working days, visiting different parts.

FOURTH CROSS-INTERROGATORY.—Did you use a drift pin or drift iron in constructing that fore tank?

A. I used the drift pin or drift iron in constructing 193
that fore tank when necessary. It is used for clean-
ing the holes out.

FIFTH CROSS-INTERROGATORY.—Did you see a drift pin or drift iron used in constructing that fore tank? A. I saw the drift pin used in constructing that fore tank.

SIXTH CROSS-INTERROGATORY.—Did any one use a drift pin or drift iron in constructing that fore tank? A. The drift pin was used in constructing that fore tank.

SEVENTH CROSS-INTERROGATORY.—How many times was the drift used in constructing that fore tank? A. I cannot say how many times the drift was used in constructing that fore tank. It was used when 194
necessary. It is put through to clean the hole when necessary. It is put in oily waste and put through to see that the thing is perfectly clear.

EIGHTH CROSS-INTERROGATORY.— What occasion was there for using the drift in such construction? A. The occasion for using the drift pin in such construction was to clean the hole out properly, so that the rivets drove properly up.

NINTH CROSS-INTERROGATORY.—Where were you when the drift was used in such construction? A. When the drift was used in such construction, I was about from time to time looking about the work and acting as superintendent generally.

TENTH CROSS-INTERROGATORY.—Were the rivets headed up cold or hot, or some cold and some hot? 195
A. The rivets were all headed up hot. It is impossible for riveters to knock a rivet down cold. With a rivet of this size, three-fourths inch, it was impossible. In water-tight work it is never done cold. If it is beaten down cold it is apt to crystalize. It is done with small rivets, half inch, for ventilators, and so on. But with a rivet of that size it would be practically impracticable to knock it down cold. Rivets of that size are never riveted cold.

ELEVENTH CROSS-INTERROGATORY.—Did you see all the rivets inserted in the rivet holes in that fore

196 tank? If nay, how many were inserted that you did not see? A. I did not see all the rivets inserted in the rivet holes in that fore tank. As I said before, I was going about constantly superintending the whole work. I saw them afterwards, and tested them when the bulkhead was completed. I overhauled every rivet with a testing hammer, and the owners' and Lloyds' surveyor tested them after me.

TWELFTH CROSS-INTERROGATORY.—How do you know that all the rivets were hot? A. I know that all the rivets were hot, because they could not knock them down cold. I saw them heated. The riveters are paid by time; they do not do these jobs by piece at all.

197 THIRTEENTH CROSS-INTERROGATORY.—Will hammering on a cold rivet make the iron cold short? A. If a rivet is not properly heated, if it is inclined to what we call "black hot," it will turn crystalized if hammered too much, and snap. I detect that again when I am testing, and if any have been crystalized, we take them out. A hot rivet will not turn that way. In this particular bulkhead I did not find one of that description.

FOURTEENTH CROSS-INTERROGATORY. — Will a buckled plate cause any strain on a rivet greater than one that is not buckled? A. I cannot say whether a buckled plate will cause any strain on a rivet greater than one that is not buckled; that is
198 not in my line of work.

FIFTEENTH CROSS-INTERROGATORY.—What is the method you employed for bringing rivet holes which were not fair into line? A. The method employed for bringing rivet holes into line that are not fair is by riming.

SIXTEENTH CROSS-INTERROGATORY.—How many rivet holes did you see faired in the fore tank construction? A. I cannot say how many rivet holes I saw faired in the fore tank construction. Those that required to be rimed would be rimed, but I cannot exactly say the number. They could not get

the rivets in if the rivet holes were not fair, without riming. 199

SEVENTEENTH CROSS-INTERROGATORY.—Will you swear of your own personal knowledge that no rivet holes were faired in the fore tank bulkhead, braces, beams or angle irons, or either of them? A. I will not swear that no rivet holes were faired in the fore tank bulkhead, braces, beams, or angle irons, or either of them. I know that they did fair, but I cannot say how many. The holes that were not properly in line had to be faired. I found when the bulkhead was complete there were very few rimed holes. If a hole is rimed we put a bigger sized rivet into it. Instead of a three-quarter inch rivet, we put a seven-eighths rivet into it. We rime the two 200 holes to one size and put a corresponding rivet in to fill it, so it is as tight as possible, with this difference, that it is a stronger rivet. Where the holes were faired they were properly faired.

EIGHTEENTH CROSS-INTERROGATORY.—What watch did you give to the riveting of the fore tank to prevent the rivets becoming cold short? A. I gave a general, usual and careful supervision to the riveting of the fore tank. I was there as often as I could possibly get.

NINETEENTH CROSS-INTERROGATORY. (*Nil.*)

TWENTIETH CROSS-INTERROGATORY.—Q. If you saw that a rivet was being hammered too much, what did you do? A. I never saw a heated rivet 201 hammered too much. The thing is to get them to hammer it sufficiently. We have to watch them to see that they hammer it properly.

TWENTY-FIRST CROSS-INTERROGATORY.—How many times have you been asked about the rivets used on the *Carib Prince* before you testified, and by whom? Have you ever written anything about the said rivets; if yea, to whom and when? Produce a copy of what you wrote and say if you have done so and hand it to the Commissioner to be annexed to your deposition, and say if you have done so? A. Before I testified, I have been asked

202 about the rivets used in the *Carib Prince* by those representing the *Carib Prince*. I have never written anything about the said rivets.

TWENTY-SECOND CROSS-INTERROGATORY.—Whose employment are you in? Whose employment were you in while the *Carib Prince* was being built? What responsibility for bad workmanship, or bad material in the *Carib Prince*, exists in you, or your employer, or those you were employed by? If by written contract, annex a copy thereof and say if you have done so? A. I am in the employment of Short Brothers, shipbuilders, Pallion, on the Wear, near Sunderland, and was in their employment at the time the *Carib Prince* was built. My responsi-
203 bility for bad workmanship or bad material was that I had to do my duty and act properly as foreman. I was employed as superintendent, to see that the work was well done. I do not know what the responsibility upon my employer was. I know of no written contract or agreement; I was merely employed as superintendent.

Mr. Kirlin reads the deposition of ANDREW TROTTER LYNN, taken on behalf of the claimant, under a commission.

FIRST INTERROGATORY.—What is your name, age, residence and occupation? What, if any, part did you take in the building of the steamship *Carib Prince;* what were your duties in regard to it, and
204 what experience have you had in the examination of and building steamships and in riveting work? A. My name is Andrew Trotter Lynn. I am 50 years of age, and reside at Heaton, Newcastle-on-Tyne. I am a ship surveyor. I was inspecting surveyor of the *Carib Prince* during the construction of the vessel, with Mr. James. I have had 30 years' experience as a practical workman in building steamships and in riveting work. The last ten years of the thirty have been wholly in inspecting.

SECOND INTERROGATORY.—What was the character of the workmen who put the rivets in the bulkhead

between No. 1 hold and the peak tank, and what was the quality of their work in this instance? A. The workmen who pu. the rivets into the bulkhead between No. 1 hold and the peak tank were experienced workmen and men of good character. Their work in this instance was very good. 205

THIRD INTERROGATORY.—Describe particularly any examinations or tests made, to your knowledge, of the said work, rivets, bulkhead or tank, stating what part you personally took; what the condition of the parts examined or tested appeared to be; what methods were used in making the examinations or tests, and how, if at all, did such methods differ from those usually employed in the examination or testing of steamships. What was the condition of the bulkhead when completed? A. After the builders' foreman had passed the rivets, and told me he had passed them, I tested them in the usual manner with a hammer. I tested in this particular bulkhead each rivet with a testing hammer. I had a steel with me at the same time; it is like a knife, to see if you could get under the head or between the plates—the plies. Previous to the ship being launched they filled the tank up to within 15 inches of the top of the tank, to test the bulkhead and the shell; that is, the outer skin of the ship. At that time, the ship was lying five eighths to the foot, which meant considerable more pressure on the bottom of the bulkhead than there would be if the ship was lying on an even keel or perhaps a foot by the stern. The result of the test was good. Scarcely a weep of one of the rivets was to be seen. A weep is a dampness that comes, but no more; in this case it was very, very trifling on the low part. The next test Mr. James made after she was launched; I was not there. Those are the methods regularly employed in the examination and testing of steamships. The condition of the bulkhead, when completed, was good. 206 207

FOURTH INTERROGATORY.—If you know of any other matter or thing to the advantage of the claim-

208 ant in this action, state the same as fully as if you had been specifically asked about it? A. As a practical man I say she was a good job, and particularly this water-tight work, which was done well, by experienced men. The work done on this bulkhead was a good job; it being a collision bulkhead, it was my thought to pay special attention to it. I did; and made a good job of it. It was a thoroughly good job.

Mr. Black reads cross-interrrogatories and answers thereto as follows:

FIRST CROSS-INTERROGATORY.—What number of rivets were there in the fore bulkhead forming the
209 after end of the fore tank? How many rows of rivets were there to each lap? How far apart horizontally were the rivets? How far apart were the rows vertically and horizontally? A. The rivets were spaced according to Lloyds' rules. It is necessary to conform to Lloyds' rules to get class, and, therefore, everything was according to Lloyds' rules.

SECOND CROSS-INTERROGATORY.—Describe the location of each rivet, and state through what it passed, and how many of all the said rivets you saw driven or drove yourself? A. It is impossible to give the location of each rivet. The riveting was done as usual, and properly.

210 THIRD CROSS-INTERROGATORY.—Where were you when each of those particular rivets was driven or headed; if you say you were not all the time present, state what portion of the time you were not present there at that bulkhead, and how many of said rivets of said bulkhead you did not see driven, or what proportion? A. I acted generally as inspecting surveyor of the whole building of the *Carib Prince*, and was there for about three hours a day, and so saw many of the rivets driven, but I cannot say how many.

FOURTH CROSS-INTERROGATORY.—Did you use a drift pin or drift iron in constructing that fore tank?

A. A drift pin was used by the builders in the usual way they do. 211

FIFTH CROSS-INTERROGATORY.—Did you see a drift pin or drift iron used in constructing that fore tank? A. I saw the drift pin used in the construction of the fore tank.

SIXTH CROSS-INTERROGATORY.—Did any one use a drift pin or drift iron in constructing that fore tank? A. A drift pin was used in the construction of the fore tank.

SEVENTH CROSS-INTERROGATORY. — How many times was the drift used in constructing that fore tank? A. I cannot say how many times the drift pin was used in constructing that fore tank.

EIGHTH CROSS-INTERROGATORY.—What occasion was there for using the drift in such construction? A. The occasion for using the drift pin in such construction was to smooth a hole. 212

NINTH CROSS-INTERROGATORY.—Where were you when the drift was used in such construction? A. I could not say where I was when the drift pin was used in such construction. I would be about the ship at the time.

TENTH CROSS-INTERROGATORY.—Were the rivets headed up cold or hot, or some cold and some hot? A. The rivets were all headed up hot.

ELEVENTH CROSS-INTERROGATORY.—Did you see all the rivets inserted in the rivet holes in that fore tank? If nay, how many were inserted that you did not see? A. I saw some of the rivets inserted in the rivet holes in the fore tank, but I could not say how many. I supervised the work generally. 213

TWELFTH CROSS-INTERROGATORY.—How do you know that all the rivets were hot? A. I know the rivets were all hot, because they could not put a rivet of that size in cold.

THIRTEENTH CROSS-INTERROGATORY.—Will hammering on a cold rivet make the iron cold short? A. "Cold short" is not a term used in regard to rivets. Hammering on a cold rivet will certainly make it

214 brittle. It would need excessive hammering on a cold rivet to set up crystallization.

FOURTEENTH CROSS-INTERROGATORY. — Will a buckled plate cause any strain on a rivet greater than one that is not buckled? A. A buckled plate will not cause any strain on a rivet greater than one that is not buckled, provided the faying of the hole is not between the plates. The "faying" is the "bore" of the hole, the ridge made by the punch round the edge of the hole. There is no extra strain, provided the plates are flat at the place where they come together.

FIFTEENTH CROSS-INTERROGATORY.—What is the method you employed for bringing rivet holes which
215 were not fair into line? A. The method employed for bringing rivet holes which are not fair into line is by riming.

SIXTEENTH CROSS-INTERROGATORY.—How many rivet holes did you see faired in the fore tank construction? A. I cannot say how many rivet holes I saw faired in the fore tank construction. They were faired if necessary.

SEVENTEENTH CROSS INTERROGATORY.—Will you swear of your own personal knowledge that no rivet holes were faired in the fore tank bulkhead, braces, beams or angle irons, or either of them? A. I will not swear of my own personal knowledge that no rivet holes were faired in the fore tank bulkhead,
216 braces, beams, angle irons, or either of them.

EIGHTEENTH CROSS-INTERROGATORY.—What watch did you give to the riveting of the fore tank to prevent the rivets becoming cold short? A. I gave to the riveting of the fore tank a general watch. I did not anticipate cold short.

NINETEENTH CROSS-INTERROGATORY.—(*Nil*).

TWENTIETH CROSS-INTERROGATORY.—If you saw that a rivet was being hammered too much, what did you do? A. I never saw a rivet hammered too much.

TWENTY-FIRST CROSS-INTERROGATORY.—How many times have you been asked about the rivets

used on the *Carib Prince* before you testified, and by whom? Have you ever written anything about the said rivets; if yea, to whom and when? Produce a copy of what you wrote and say if you have done so, and hand it to the Commissioner to be annexed to your deposition, and say if you have done so? A. I have been asked twice by the English representatives of the *Carib Prince* about the rivets used in the *Carib Prince*. I have never written anything about the said rivets. 217

TWENTY-SECOND CROSS-INTERROGATORY.—Whose employment are you in? Whose employment were you in while the *Carib Prince* was being built? What responsibility for bad workmanship or bad material in the *Carib Prince* exists in you or your employer, or those you were employed by? If by written contract, annex a copy thereof and say if you have done so. A. I am now, and was at the time the *Carib Prince* was built, in the employment of Mr. James Knott, of Newcastle-upon-Tyne, managing owner of the *Carib Prince*. My responsibility was to superintend the work generally for the owner. And my interest was to see that the work was well done, and that it was right when it was done. I am still in Mr. Knott's employment, with the right to take other jobs as ship's surveyor. My responsibility would simply be as a ship's surveyor. 218

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Mr. Kirlin reads the deposition of WILLIAM LLOYD SHARPE, taken in behalf of the claimants, under a commission.

FIRST INTERROGATORY.—What is your name, age, residence and occupation? What, if any, part did you take in the building of the steamship *Carib Prince*, what were your duties in regard to it, and what experience have you had in the examination and building steamships and in riveting work? A. My name is William Lloyd Sharpe; I live at Sunderland; I am forty-nine years of age and am a Lloyds'

220 surveyor. I took supervision of the whole building of the *Carib Prince*, except the machinery, for Lloyds. I have had thirty years' experience in the examination of and building of steamships and in riveting work, part of the time as a practical riveter.

SECOND INTERROGATORY.—What was the character of the workmen who put the rivets in the bulkhead between No. 1 hold and the peak tank, and what was the quality of their work in this instance? A. The workmen who put the rivets in the bulkhead between No. 1 hold and the peak tank were very good riveters, and the work generally throughout the ship was very good. As one of Lloyds' surveyors at Sunderland I have known the particular
221 set of men who did that work as experienced riveters for several years.

THIRD INTERROGATORY.—Describe particularly any examinations or tests made to your knowledge of the said work, rivets, bulkhead or tank, stating what part you personally took, what the condition of the parts examined or tested appeared to be. What methods were used in making the examinations or tests, and how, if at all, did such methods differ from those usually employed in the examination or testing of steamships. What was the condition of the bulkhead when completed? A. I personally tested almost every rivet in the fore peak, with the usual test of the hammer. The peak was
222 then filled with water and tested to the requirements of Lloyds' rules, and found very satisfactory. After the peak was emptied I was again inside the peak tank and did more testing, and found everything very good and satisfactory. There were two water tests and I was present at both. Those were the usual tests. The condition of the bulkhead when completed was very good.

FOURTH INTERROGATORY.—If you know of any other matter or thing to the advantage of the claimant in this action, state the same as fully as if you had been specifically asked about it? A. I surveyed for class, and the job was a good one when it was

done. Certainly the bulkhead when completed was 223
in excellent condition, with good workmanship. Right through the ship generally was very good. I can only account for any damage having arisen to the fore peak by the peak having received some unnecessary strain or concussion of some sort.

Mr. Black reads cross-interrogatories and answers thereto, as follows:

FIRST CROSS INTERROGATORY.—What number of rivets were there in the fore bulkhead forming the after end of the fore tank? How many rows of rivets were there to each lap? How far apart horizontally were the rivets? How far apart were the 224
rows vertically and horizontally? A. The rivets in the fore bulkhead forming the after end of the fore tank were spaced according to Lloyds' rules. The laps were single riveted, and the riveting was according to Lloyds' requirements for water-tight bulkheads.

SECOND CROSS-INTERROGATORY.—Describe the location of each rivet, and state through what it passed, and how many of all said rivets you saw driven, or drove yourself? A. I cannot describe the location of each rivet. I cannot say how many I saw driven. It is not necessary for me to be there to see them driven; I come in at the finish and see that they are all right when driven. I was there almost every day, so I would see very nearly the whole of it. 225

THIRD CROSS-INTERROGATORY.—Where were you when each of those particular rivets was driven or headed; if you say you were not all the time there present, state what portion of the time you were not present there at that bulkhead, and how many of said rivets of said bulkhead you did not see driven, or what proportion? A. As I said in answer to the last question, I was there nearly every day superintending the work. I cannot say what proportion of such rivets in such bulkhead I saw driven.

226 I went after it was done and tested, and all the rivets were found right.

FOURTH CROSS-INTERROGATORY.—Did you use a drift pin or drift iron in constructing that fore tank? A. I did not myself use a drift pin or iron in the construction of that fore tank.

FIFTH CROSS-INTERROGATORY.—Did you see a drift pin or drift iron used in constructing that fore tank? A. I saw a drift pin used in the construction of that fore tank, as usual.

SIXTH CROSS-INTERROGATORY.—Did any one use a drift pin or drift iron in constructing that fore tank? A. A drift pin was used in the construction of that fore tank.

227 SEVENTH CROSS-INTERROGATORY.—How many times was the drift used in constructing that fore tank? A. It is impossible to say how many times the drift pin was used in the construction of that fore tank. It was not used unnecessarily, that I noticed.

EIGHTH CROSS-INTERROGATORY.—What occasion was there for using the drift in such construction? A. The occasion for using the drift pin in such construction was to smooth holes, to get the rivets straight through. It is always used under such circumstances.

NINTH CROSS-INTERROGATORY.—Where were you when the drift was used in such construction? A. I
228 was about the vessel when the drift pin was used in such construction.

TENTH CROSS-INTERROGATORY.—Were the rivets headed up cold or hot, or some cold and some hot? A. The rivets were all headed up hot. It is impossible to knock them down cold.

ELEVENTH CROSS-INTERROGATORY.—Did you see all the rivets inserted in the rivet holes in that fore tank? If nay, how many were inserted that you did not see. A. It is impossible for me to say how many rivets I saw inserted in the rivet holes in that fore tank. But I gave a general supervision as Lloyds' surveyor.

TWELFTH CROSS-INTERROGATORY.—How do you know that all the rivets were hot? A. I know that all the rivets were hot, because it was impossible to knock them down cold, rivets of that size. There are machines for riveting, but they are all hot rivets. 229

THIRTEENTH CROSS-INTERROGATORY.—Will hammering on a cold rivet make the iron cold short? A. There is no such term as "cold short" in riveting or in rivet iron at all. "Cold short" is used for the manufacture of iron. It is a very old term, which indicates a breaking; it does away with the grain of the iron. Heading a cold rivet would crystallize it, but would not make it cold short.

FOURTEENTH CROSS-INTERROGATORY.—Will a buckled plate cause any strain on a rivet greater than one that is not buckled? A. A buckled plate will not cause any strain on a rivet greater than one that is not buckled, provided there is sufficient faying surface at each side of the rivet; a buckled plate will have no effect upon the rivet. 230

FIFTEENTH CROSS-INTERROGATORY.—What is the method you employed for bringing rivet holes which were not fair, into line? A. The method employed for bringing rivet holes which were not fair into line is by riming.

SIXTEENTH CROSS INTERROGATORY.—How many rivet holes did you see faired in the fore tank construction? A. I cannot say how many holes I saw faired in the fore tank construction. 231

SEVENTEENTH CROSS-INTERROGATORY.—Will you swear of your own personal knowledge that no rivet holes were faired in the fore tank bulkhead, braces, beams or angle irons, or either of them? A. I will not swear of my own personal knowledge that no rivet holes were faired in the fore tank bulkhead, braces, beams or angle irons, or either of them. It is very necessary to fair them sometimes. All holes that were faired were faired in a proper, workmanlike manner.

EIGHTEENTH CROSS-INTERROGATORY.—What

232 watch did you give to the riveting of the fore tank to prevent the rivets becoming cold short? A. I gave to the riveting of the fore tank the usual supervision of a Lloyds' surveyor. I visited the works almost daily. I did not anticipate "cold short," which does not apply to riveting.

NINETEENTH CROSS-INTERROGATORY.—(*Nil*).

TWENTIETH CROSS-INTERROGATORY.—If you saw that a rivet was being hammered too much what did you do? A. It is impossible for a hot rivet to be hammered too much.

TWENTY-FIRST CROSS-INTERROGATORY.—How many times have you been asked about the rivets used on the *Carib Prince* before you testified, and by whom?
233 Have you ever written anything about the said rivets? If yea, to whom and when? Produce a copy of what you wrote and say if you have done so and hand it to the Commissioner to be annexed to your deposition and say if you have done so? A. I have been asked twice before I testified about the rivets used in the *Carib Prince* by the English representatives of the *Carib Prince*. I have not written anything about the said rivets.

TWENTY-SECOND CROSS-INTERROGATORY.—Whose employment are you in? Whose employment were you in while the *Carib Prince* was being built? What responsibility for bad workmanship or bad material in the *Carib Prince* exists in you or your
234 employer, or those you are employed by? If by written contract, annex a copy thereof and say if you have done so? A. I am now, and was at the time the *Carib Prince* was being built, in the employment of Lloyds' Registry. For bad workmanship or bad material I had the responsibility of a Lloyds' surveyor, my reputation being at stake.

Mr. Kirlin reads the deposition of MATTHEW COULSON JAMES, taken on behalf of the claimant under a commission. 235

FIRST INTERROGATORY.—What is your name, age, residence and occupation? What, if any, part did you take in the building of the steamship *Carib Prince*, what were your duties in regard to it, and what experience have you had in the examination of and building steamships and in riveting work? A. My name is Matthew Coulson James. I am 37 years of age, and reside at Gateshead. I am a shipbuilder and naval architect. The ship *Carib Prince* was built to my design, and I was inspector on behalf of the owner to see that those designs and specifications were carried out. I have had 24 years' 236 experience as a shipbuilder, in all branches of shipbuilding.

SECOND INTERROGATORY.—What was the character of the workmen who put the rivets in the bulkhead between No. 1 hold and the peak tank, and what was the quality of their work in this instance? A. The workmen who put the rivets in the bulkhead between No. 1 hold and the peak tank appeared to be competent men, and the work they did was very good and sound.

THIRD INTERROGATORY.—Describe particularly any examinations or tests made to your knowledge of the said work, rivets, bulkhead or tank, stating what part you personally took, what the condition 237 of the parts examined or tested appeared to be, what methods were used in making the examinations or tests, and how, if at all, did such methods differ from those usually employed in the examination or testing of steamships. What was the condition of the bulkhead when completed? A. I was present when the tank and bulkhead were tested, by filling the tank with water to about a foot above the main deck. I calculated the pressure thus exerted and found it to be ninety-six and three-quarter tons total pressure on the bulkhead. That is in excess of

238 Lloyds' requirements. The bulkhead was thoroughly tight, and stood the test satisfactorily, without showing any signs of weakness or leaking. I did not see the first test. I did not particularly test all the rivets, but I did test a few with a hammer, and found them tight and properly laid up. The tests were the usual tests used for such parts of a vessel. The bulkhead, when completed, was a thoroughly good job.

FOURTH INTERROGATORY.—If you know of any other matter or thing to the advantage of the claimant in this action, state the same as fully as if you had been specifically asked about it. A. More than usual care was taken in the supervision of the work
239 on this ship. I visited her twice or three times a week, and my colleague, Mr. Lynn, visited her even more frequently, and we gave very close attention to the work. Our survey was in addition to the usual survey of Lloyds' surveyor.

Mr. Black reads cross-interrogatories and answers thereto as follows:

FIRST CROSS-INTERROGATORY.—What number of rivets were there in the fore bulkhead forming the after end of the fore tank? How many rows of rivets were there to each lap? How far apart horizontally were the rivets? How far apart were the
240 rows vertically and horizontally? A. I cannot state the number of rivets there were in the fore bulkhead forming the after end of the fore tank. I am not a rivet counter, and only a rivet counter knows that. The spacing of the rivets, the arrangement of the plates, stiffening angles, and the general design of the bulkhead, were strictly in accordance with Lloyds' rules. Additional stiffening was fitted in accordance with my specification, in order to make the bulkhead more than usually strong. Lloyds require certain things, and the owners, to get a particularly good job, required extra stiffening

right through the ship; we have things in excess of 241
Lloyds' requirements.

SECOND CROSS-INTERROGATORY.—Describe the location of each rivet, and state through what it passed and how many of all said rivets you saw driven or drove yourself? A. I cannot describe the location of each rivet. I gave a general supervision to the construction of the bulkhead, but cannot speak as to the number of rivets or their location. The work was satisfactorily carried out.

THIRD CROSS-INTERROGATORY.—Where were you when each of those particular rivets was driven or headed; if you say you were not all the time there present, state what portion of the time you were not present there at that bulkhead, and how many of 242
said rivets of said bulkhead you did not see driven or what proportion? A. I visited the ship two or three times every week during the construction, and, as I said before, the work was done satisfactorily.

FOURTH CROSS-INTERROGATORY.—Did you use a drift pin or drift iron in constructing that fore tank? A. The drift pin would certainly be used, as is the usual custom in ordinary shipbuilding work.

FIFTH CROSS-INTERROGATORY.—Did you see a drift pin or drift iron used in constructing that fore tank? A. I do not remember that I saw the drift pin used in constructing that fore tank.

SIXTH CROSS-INTERROGATORY.—Did any one use a 243
drift pin or drift iron in constructing that fore tank? A. I cannot say that any one did use the drift pin in constructing the fore tank, but I suppose it would be used when necessary.

SEVENTH CROSS-INTERROGATORY.—How many times was the drift used in constructing that fore tank? A. I have no idea how many times the drift pin was used in constructing that fore tank.

EIGHTH CROSS-INTERROGATORY.—What occasion was there for using the drift in such construction? A. The occasion for using the drift pin in such con-

244 struction was to smooth the hole, to facilitate the passage of the rivet through.

NINTH CROSS-INTERROGATORY.—Where were you when the drift was used in such construction? A. I cannot say where I was when the drift pin was used in such construction.

TENTH CROSS-INTERROGATORY.—Were the rivets headed up cold or hot, or some cold and some hot? A. The rivets would certainly be headed up hot; they could not be headed up cold.

ELEVENTH CROSS-INTERROGATORY.—Did you see all the rivets inserted in the rivet holes in that fore tank? If nay, how many were inserted that you did not see? A. I cannot say how many rivets I saw in-
245 serted in the rivet holes in the fore tank. It is not customary for inspectors to count the rivets

TWELFTH CROSS-INTERROGATORY.—How do you know that all the rivets were hot? A. I know the rivets were hot, because they could not be laid up cold.

THIRTEENTH CROSS INTERROGATORY.—Will hammering on a cold rivet make the iron cold short? A. Long continuous hammering will render a rivet brittle. The term "cold short" is never applied to rivets. It is an obsolete term, formerly used in iron manufacture.

FOURTEENTH CROSS-INTERROGATORY.—Will a buckled plate cause any strain on a rivet greater
246 than one that is not buckled? A. A buckled plate will not cause any strain on a rivet greater than one that is not buckled if the faying surfaces are close together in the way of the riveting.

FIFTEENTH CROSS-INTERROGATORY.—What is the method you employed for bringing rivet holes which were not fair into line? A. The method employed to bring rivet holes which are not fair into line is by riming.

SIXTEENTH CROSS-INTERROGATORY.—How many rivet holes did you see faired in the fore tank construction? A. I saw no rivet holes faired in the fore tank construction.

SEVENTEENTH CROSS-INTERROGATORY.—Will you swear of your own personal knowledge that no rivet holes were faired in the fore tank bulkhead, braces, beams or angle irons, or either of them? A. I will not swear of my own personal knowledge that no rivet holes were faired in the fore tank bulkhead, braces, beams, angle irons, or either of them. In the building of almost any part of an iron ship there are more or less holes to be faired. 247

EIGHTEENTH CROSS-INTERROGATORY.—What watch did you give to the riveting of the fore tank to prevent the rivets becoming cold short? A. I gave a general supervision to the riveting of the fore tank. Mr. Lynn, my colleague, had the practical supervision and mine was general. I did not anticipate cold short rivets. 248

NINETEENTH CROSS-INTERROGATORY.—(*Nil*).

TWENTIETH CROSS INTERROGATORY.—If you saw that a rivet was being hammered too much, what did you do? A. I have never found a rivet hammered too much.

TWENTY-FIRST CROSS-INTERROGATORY.—How many times have you been asked about the rivets used on the *Carib Prince* before you testified, and by whom? Have you ever written anything about the said rivets? If yea, to whom and when? Produce a copy of what you wrote and say if you have done so, and hand it to the Commissioner to be annexed to your deposition and say if you have done so? A. Before I testified I have been seen by the Newcastle solicitor for the *Carib Prince* once with reference to the rivets. I have never written anything about the said rivets. 249

TWENTY-SECOND CROSS-INTERROGATORY.—Whose employment are you in? Whose employment were you in while the *Carib Prince* was being built? What responsibility for bad workmanship or bad material in the *Carib Prince* exists in you, or your employer, or those you were employed by? If by written contract, annex a copy thereof and say if you have done so? A. I am now, and was at the

250 time of the building of the *Carib Prince*, in the employment of Mr. James Knott, of Newcastle-on-Tyne, the managing owner of the *Carib Prince*. I was responsible to him and to the owners to see that the vessel was well and truly built in accordance with my designs and specification. I produce the specification from which the *Carib Prince* was built, and I hand in extracts from pages 1 to 6 of the material portions relating to the particular work in question, and marked "Exhibit A."

HERBERT VERNON SAUNDERS, being duly sworn and examined as a witness for the claimants, testifies:

251 By Mr. Kirlin:

Q. Are you a master mariner? A. I am.

Q. Have you had command of iron and steel steamships? A. I have.

Q. For how long? A. A period of over two years.

Q. What is your present business? A. Superintendent.

Q. For whom? A. Mr. James Knott.

Q. The owner of the *Carib Prince?* A. Managing owner of the *Carib Prince.*

Q. How long have you been superintendent in New York? A. Over twelve months.

252 Q. What are your duties as superintendent? A. Generally look after the steamers' repairs, engines and boilers, and so forth.

Q. How many steamers do you look after for Mr. Knott? A. On the whole, about fifty steamers.

Q. Where were you in New York at the end of the voyage in September, 1893? A. I was not in New York when she returned on that voyage.

Q. When were you next after that? A. I was here when she returned two voyages after that, in the beginning of January.

Q. Had the bulkhead been repaired in the meantime? A. The bulkhead was not finally repaired

until I returned; that was the beginning of January. 253

Q. Before that how had the hole been stopped? A. Part of the rivet had been caulked up and a temporary bolt put in where the one was gone.

Q. Did you see the bolt taken out? A. I saw the bolt taken out.

Q. What was the condition of the hole? A. Practically fair, but rusty.

Q. The engineer testified that the holes were not fair at that point, the holes where that rivet was broken out; is that testimony true?

Objected to.

A. The holes that I saw were practically fair; in other words, true. 254

Q. What size were they? A. Three-quarters.

Q. Had they been reamed out at that time? A. They had not.

Q. Were you aboard when the rivets were taken out? A. I was aboard when the rivets were knocked out.

Q. How many were taken out? A. Of those that were slack, we renewed five.

Q. Did you see the holes after those rivets were taken out, all of them? A. All of them after they were taken out.

Q. How were the holes? A. The holes were true.

Q. The holes in the knee tie and in the bulkhead? 255
A. Were practically true. They may be a shade out more or less.

Q. What is a "shade"? A. Say, might be a sixteenth of an inch.

Q. Does that make any difference in the strength of a rivet? A. It does not.

Q. Did you see the new rivets put in? A. I saw them after they were put in.

Q. Were you there when they were tested afterwards? A. I tested them myself.

256 Q. Are the officers and engineer of the ship servants of Mr. Knott? A. They are not.

Q. The vessel is under charter? A. The vessel is under time charter.

Q. A charter of the bare ship?

Counsel for libellants moves to strike out that the officers of the ship are not in the service of Mr. Knott as mere hearsay.

Q. Have you got the charter-party of the *Carib Prince?* A. I have in my office.

Q. Do you know whether it is the charter of the bare ship or not?

Objected to on the ground that the charter-
257 party speaks for itself.

A. The ship is on time charter.

Q. Is this a copy of the charter-party I show you? A. It is.

Mr. Kirlin: I offer in evidence the charter-party for the purpose of showing that it is only a charter of the bare ship and that all of the members of the crew and officers are servants of the charterer, not of the shipowner.

The charter-party is marked Claimants' Exhibit A.

Q. Does the hire of the vessel pass through your hands? A. It does not.

258 Q. Whose hands? A. W. W. Hurlbut & Co., and they collect the hire monthly.

Q. Have you ever commanded a ship that had a peak-tank? A. I have.

Q. Can you say whether or not it is a prudent thing to do to fill the peak tank at sea without stopping the ship? A. It is not. The proper thing is a ship should be stopped and perfectly still. It is a very unwise, unsafe thing to do, on account of the strain, the motion of the water causing heavy strain on the bulkhead.

Q. Do you know what the capacity of that tank is? A. Eighty-three tons.

CROSS-EXAMINED by Counsel for Libellants: 259

By Mr. Black:

Q. I understand you did not see the ship until January after this thing happened? A. January.

Q. Then you found some temporary repairs in this bulkhead. Did you see those bolts removed? A. I did; I saw one bolt removed.

Q. How many bolts were there? A. There was only one.

Q. Sure of that? A. The other rivets that were replaced were leaky rivets.

Q. How many bolts did you see? A. One.

Q. That bolt ran through what part of this bulkhead? A. The end of the angle iron on the fore- 260
and-aft stringer.

Q. Which end of the angle iron? A. The inside end.

Q. On which side of the ship? A. On the port side of the ship.

Q. How far from the side of the ship was that bolt? A. About two feet.

Q. How high above the floor of No. 1 hold was that bolt? A. About four feet above the floor or top of the tank.

Q. Did you have that bolt in your hand? A. I did not.

Q. It had a head on one side and a nut on the other? A. It did.

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Q. Which side you see? A. I saw both. I was inside of the tank and outside of the tank.

Q. Which side of the bulkhead was the nut? A. The nut was on the outside or in the hold, No. 1 hold.

Q. Were you present when that bolt was removed? A. I was not when it was removed.

Q. What was in that hole when you saw it next after the nut was there? A. The hole was clean; there was nothing in it.

Q. Nothing in it? A. Nothing in it.

262 Q. Did you see the men working at it at that time? A. I did.

Q. What were they doing to it then? A. At which particular time?

Q. When you first saw it—— A. The men were doing nothing to it. The men couldn't do anything.

Q. When you first saw it after the bolt had been taken out? A. The men were doing nothing to it.

Q. What examination did you make? A. I examined it thoroughly.

Q. Did you put your finger in the hole? A. I did.

Q. Did you go all the way through? A. Yes.

263 Q. Did you feel the angle iron at the back? A. Yes.

Q. And was it all smooth and fair there? A. Except rusty; it was fair.

Q. The hole of the angle iron and the hole of the bulkhead were exactly in line, were they not? A. As I said before it may have been a shade out, but it was practically fair.

Q. Could you run your finger through it easily? A. I could with ease.

Q. Did you measure it? A. I did not.

Q. Where were the other five rivets you renewed? A. Three on the vertical angle iron.

Q. Do you mean this stiffening bar? A. I mean

264 this stiffening bar.

Q. The one that runs vertically from the floor of the No. 1 up to the main deck? A. Up to the between-decks.

Q. And on which side of that stiffening iron were they? A. On the after part; the rivets would go through both the plate and the stiffening bar.

Q. That stiffening iron is an angle-iron, isn't it? A. Yes, sir. The vertical bar——

Q. Let me give my question. The flat part of that angle iron which comes in contact with the bulkhead was turned with the outer edge towards the side of the ship, was it? A. Correct.

Q. And these rivets which you replaced ran up 265
and down on that bar? A. Ran up and down on that bar.

Q. How far were the rivets in the stiffening bar or stiffening iron from the place where the bolt went through? A. Just alongside of it, right alongside of it.

Q. And that rivet you say you renewed as well? A. That rivet and two above it.

Q. And how many below it? A. None below.

Q. You said there were five renewed? A. Three on the vertical bar and two on the angle iron.

Q. Were those two on the same angle iron? A. Those two were on the same angle-iron.

Q. Did you know of anything being renewed on 266
the starboard side angle iron? A. I did not, with the exception one of the angle irons was caulked.

Q. Who did those repairs? A. Handren & Robins, or John N. Robins.

Q. Who made the temporary repairs? A. The temporary repairs were finished by the same foreman.

Q. That you only know by hearsay, you were not here? A. I was not here.

Q. Somebody told you so? A. Somebody told me so.

REDIRECT by Counsel for Claimants:

By Mr. Kirlin: 267

Q. Which one of the rivets was it on the knee tie or stiffening bar that was gone? A. There was none wholly gone, not on the stiffening bar; they were merely slack.

Q. I mean on the cross-tie? A. The very end rivet.

Q. Which end? A. The inside end.

Q. That is towards the amidships? A. That is towards the amidships.

Q. Where is the vertical bar, on the inside of the tank or on the outside? A. On the outside of the tank.

268 FRANK S. MARTIN, being duly sworn and examined as a witness for the claimants, testifies:

By Mr. Kirlin:

Q. Are you a marine engineer and surveyor? A. Yes, sir.

Q. Of what experience? A. I have been a surveyor in New York for fifteen years; previous to that time I was in the ship-building business.

Q. How many times did you survey the *Carib Prince* in the fall of 1893? A. Twice.

Q. In what month? A. September.

Q. Twice in September? A. Twice in September.

Q. Did you survey her on her arrival from Gran-
269 ada? A. Yes, sir.

Q. Did you survey the peak-tank bulkhead? A. I did.

Q. Did you find any trouble with the rivets? A. I found one rivet on the port side at the inner end, that is, towards the centre of the ship, of the angle iron connecting the side stringer with the bulkhead; the head was gone; one rivet next to that was loose. That is all I found on that particular day.

Q. Was the rivet—was any part of the broken rivet in the hole when you saw it? A. No, sir; there was a plug there; a wooden plug.

By the Court:

270 Q. In the hole? A. In the hole.

Q. No part of the rivet there? A. No part of the rivet there.

By Mr. Kirlin:

Q. Did you haul the plug out and examine it? A. No, sir; I did not.

Q. When did you next examine it? A. Next day.

Q. Was the plug out of it then? A. No, the plug was still in; the tank had been filled with water.

Q. What was the condition of the bulkhead as to being water tight? A. I found the rivet that was

loose, next to the one broken, was leaking; also 271
found on the starboard side of the ship in the same angle, corresponding angle, two rivets there also leaking; and altogether I think I counted 11 rivets in the bulkhead that were leaking.

Q. Do you know what repair was made at that time? A. No, sir.

Q. Did you see the plug taken out? A. No, sir.

Q. Did you examine her when she came back and was repaired? A. I have not seen her since; I have never been aboard the vessel since.

Q. Is that a usual construction of modern steamships to have a large tank forward? A. Yes, sir.

Q. What do you say as to its being a prudent thing to fill such a tank without stopping ship? A. 272
I say it is not prudent.

Q. Why? A. The immense volume of water there is pressing against the bulkhead with the motion of the ship going through the water.

Q. Do you remember whether that tank extended to the between-decks or clear to the top deck? A. Extended to the between-decks.

Q. There has been a little confusion about that in the examination; you are positive of that, are you? A. I am positive; I went in the fore-peak tank.

CROSS-EXAMINED by Counsel for Libellants:

By Mr. Black:

273
Q. What was the date of your inspection of the *Carib Prince* in September, 1893? A. Can I look at my book?

Q. Yes. A. I have the dates here—September 11th and 12th.

Q. Who was present at the time of that examination? A. The chief engineer and the chief officer and the carpenter.

Q. Did I understand you to say that at that time there was water in this tank? A. No, sir; not until next day; I asked them to fill the tank for me.

Q. You went twice, did you? A. Yes, sir.

274 Q. Your second visit was the 12th of September? A. The 12th of September.

Q. On the first occasion you went did you make any careful examinatiou of both sides of the tank? A. No, sir.

Q. You did't go into the tank? A. I went into the tank the first day and examined around where this plug was.

Q. Did you examine in No. 1 hold the first day? A. I examined No. 1 hold first, saw where the plug was through the rivet hole, and then afterwards went in and down through the manhole into the tank and examined.

Q. Was the cargo out of No. 1 hold the first day?
275 A. They were taking the cargo out.

Q. Was it so you could see the entire face of the bulkhead? A. Yes, sir.

Q. How high above the floor do you think that plug was? A. Almost as high as my head, I should say.

Q. About five feet? A. About five feet, I should think.

Q. And how far away from the side of the vessel? A. I should say it was between three and four feet.

Q. Did you measure it? A. No, sir; I did not. It is so long ago I don't remember the exact distance, but I know it was connected with the side stringer that ran on the inside of the tank, which would be
276 about from 15 to 18 inches wide, and on the side stringer was a bracket that came out at an angle.

Q. That is a stiffening brace? A. No; this is the side stringer. Your model is correct.

Q. That is what is called a knee tie? A. A knee tie, and from that tie was an angle that ran athwartship connecting the tie with the bulkhead.

Q. That was a piece of angle-iron fastening the knee.tie to the bulkhead? A. To the bulkhead.

Q. Was there an angle iron on both sides of the knee tie? A. Top and bottom?

Q. Yes. A. I am not prepared to say; I don't remember whether there was or not.

Q. The proper construction of that bulkhead would require two angle irons at the knee tie, wouldn't it? A. Not necessarily. 277

Q. It is usual to have it so, isn't it? A. You can't tell what is usual nowadays.

Q. Hasn't it been your experience that it is usual? A. I have seen it both ways.

Q. Have you seen it most often with two angle irons? A. I can't say positive whether I have or not.

Q. You have a general impression, haven't you, which is the most common? A. I should think it would be more common with two.

Q. This particular plug ran through the bulkhead into the angle iron which fastened the bulkhead to the knee tie, didn't it? A. Ran through the bulkhead and filled up the hole. 278

Q. You haven't answered my question. It ran through the bulkhead and through the angle iron which was fast to the knee tie, didn't it? A. Yes, sir.

Q. You didn't pull that plug out? A. No, sir.

Q. You never saw it out? A. Never touched it.

Q. Didn't you see two plugs? A. I saw one.

Q. Were you looking for two plugs? A. I was looking to find any leaks.

Q. Next day you saw but the one plug again? A. But the one plug again.

Q. How many rivets did you count that were weeping or showed signs of rust where they had been weeping? A. Eleven. 279

Q. Where were those? A. Two on one side in the same position I have described and two on the other side in corresponding positions, and three or four in the vertical stiffener and several in the seam of the plate.

Q. The seam of the bulkhead? A. Yes, sir.

Q. You say two were in the "same position;" do you mean by that there was a plug and weeping rivet near that plug? A. Next rivet to it.

Q. Which ran through what? A. Through the

280 bulkhead and through the angle of the corner bracket.

Q. The next rivet nearest to the side of the ship? A. The next rivet nearest to the side of the ship.

Q. The plug was in the extreme end of the angle iron? A. The extreme end.

Q. How far apart were those two rivets horizontally? A. Probably five inches.

Mr. Kirlin reads deposition of JAMES MCPHERSON SCOTT, taken on behalf of the claimant, as follows:

Q. Captain Scott, were you the chief officer of the *Carib Prince* on the voyage from Grenada towards
281 New York in the month of September, 1893? A. Yes.

Q. How long have you been at sea? A. Since 1875.

Q. How long have you been an officer? A. Since 1879.

Q. And what certificate do you now hold? A. Master's.

Q. How long have you held a master's certificate? A. Nine years.

Q. And you are now in command of the *Carib Prince?* A. Yes.

Q. How long have you been in command? A. Three months.

Q. Do you remember the circumstance that on the
282 fifth of September, 1893, on sounding the fore-peak tank, it was discovered to have been leaking, and taking off the hatches, and making an inspection of the hold of the *Carib Prince?* A. Yes.

Q. Were you on watch at the time? A. Yes.

Q. Will you state what was the first information you received of this difficulty? A. The carpenter, after sounding the ship at 6 A. M., came and reported to me that the tank was slack or leaking. By taking off the hatches——

Q. What did you then do? A. We took off the hatches. We were taking off the hatches at the

time. We went down below into the fore lower hold. 283

Q. What did you there find? A. I there found the water was over the floor and amongst the cargo.

Q. How high up was it on the floor? A. About four feet, as near as I can recollect.

Q. On the floor? A. Three to four feet. That was on the after part of the hold, of course.

Q. The after part of the hold? What was in the forward part? A. About eight inches to a foot. I didn't take particular notice of the depth of water on the fore part.

Q. Have you any entries relating to the trim of the vessel from the last port? A. There would be the draft on there, showing she was going astern, I 284 believe, on leaving Grenada, the last port, 14.10 forward by 16.10 aft, making the ship 2 feet by the stern.

Q. How much cargo was there in the lower hold No. 1 when you went down after this report from the carpenter? A. The lower hold would be about one third full, one-third to a half full, as near as I can recollect.

Q. Did you go down personally? A. Yes.

Q. Did you ascertain the source of the leak? A. Yes.

Q. What was it? A. A rivet was out on the fore-peak tank on the port side.

Q. How far above the floor was that rivet hole? 285 A. It would be about seven feet, as near as I can remember.

Q. Who was in the hold with you at the time? A. The chief engineer.

Q. Was the leak below the top of the cargo or above it? A. Above it.

Q. Did you see it as soon as you got down? A. Yes, as soon as we got down we could see the water rushing.

Q. What precaution did you take to stop the leak? A. Started pumping the tank out—drove a plug in.

Q. Was that done? A. Yes, at once.

286 Q. What did you do next? A. Then I got the men down below, and shifted the cargo in the wings to get the limber boards up in the after end.

Q. Did you get them up? A. No; we couldn't get the back one up, but we cut through to let the water run down to the strum boxes.

By Mr. Black:

Q. That is, the strainer? A. The strainer attached.

By Mr. Kirlin:

Q. Where is that strum? A. In the bilges aft, against the bulkhead.

287 Q. Is there any sluiceway in the bulkhead between the No. 1 and No. 2 holds? A. No; each hold pumps from itself.

Q. There is a pipe from each hold, is there? A. Yes.

Q. So that water from one hold cannot get into the other? A. No.

Q. Is there any cock by which this strum pipe is opened and shut? A. In the engine-room, yes. So that they can put it on and pump them dry. The connections all lead off the one pump; you may have four or five connections leading to one bilge pump.

288 By Mr. Black:

Q. Four or five way valves? A. Yes.

By Mr. Kirlin:

Q. Are these all kept shut except the one attached to the pump that is working? A. Certainly.

Q. At all times at sea? A. Yes.

Q. Then, in the ordinary course, the valve at the other end of the strum pipes which lead into the No. 1 hold would not be open except when they wanted to pump? A. Yes.

Q. Was that the case on the morning when you

discovered this? A. As far as I know. The chief 289
engineer is the man that is responsible for that; but as far as I know.

Q. How often are the tanks sounded? A. Night and morning.

Q. How often are the holds sounded? A. Night and morning.

Q. And unless those soundings disclose water, do the valves of the strum pipes remain closed? A. Yes. When the soundings are taken the carpenter reports them to the chief officer, and marks them down on the blackboard inside the engine-room. The engineer has the watch, usually the second engineer, and reports late in the evening, and he pumps all the bilges out every morning and every evening 290
in the watch, and sees what is marked on the blackboard.

Q. Does he put the pump on when he has not soundings? A. No; he does not put the pump on if the bilges are dry.

Q. Do you know whether this particular hold was pumped out the evening before or sounded? A. I don't know; I don't remember. If there was water in the bilges they would have been pumped.

Q. (Book shown witness.) Is this log book in your handwriting? A. Yes, except the report of the hurricane, and there I was injured and was not able to do it for two days.

Q. On the 4th of September are the entries there 291
in your handwriting? A. Yes.

Q. Can you remember, without referring to your log book, whether any report was made of soundings or of the pumps on the day preceding the discovery of the leak? As far as I can remember, the usual report was made.

Q. What was that? A. Of two or three inches, possibly, no more. We generally have two or three inches in the bilges; but there was nothing extraordinary or I should have noticed it and logged it.

Q. When you received the reports from the carpenter as to soundings, do you make any note of

292 them? A. No, except to see they are marked on the blackboard in there. If the soundings are small I don't myself go and look at the board; but if there is any unusual amount of water in the well, say eight inches or a foot in the after well, I generally go and see that the thing is pumped out.

Q. But in the ordinary course? A. In the ordinary course the ship leaks so little and makes so little water that the carpenter marks it on the board and it is pumped out.

Q. When you come to write up the log do you refer to the board or what do you refer to as a basis for the entries you have in the log about the pumps? A. To the board and the carpenter's report.

293 Q. On the 4th of September you have the entry, "Pumps, lights and lookouts strictly attended to"? A. Yes.

Q. What does that mean? A. That means that the lights are put out at sunset; that the pumps in the wells and the holds have been sounded and pumped out, and that the lookouts are kept stationed at their posts after sunset.

Q. Is that entry correct, so far as the pumps are concerned, as of the date of the 4th of September? A. Yes.

Q. Is the entry on the 5th of September in your handwriting? A. Yes.

Q. When had you seen that bulkhead, especially
294 that part of it where you found the rivet gone, last before the morning of the 5th of September? A. Before we started loading.

Q. When did you see it before she started loading? A. When the holds were cleaned out. We cleaned out the holds after the outward cargo. After it is cleaned out we always go around and see if they are all right.

Q. Did you go down into the No. 1 hold yourself? A. Yes.

Q. Did you look at this bulkhead? A. Generally look around; not particularly.

Q. Was the tank filled up before—— A. The fore 295
peak tank was filled up afterwards.

Q. Was it full at all? A. It had been full before that.

Q. Before the accident? A. Yes.

Q. When? A. On the voyage before that.

Q. In port or at sea? A. The tank was filled on the Sunday after we left.

Q. You are referring now to the first time it was filled? A. I don't remember the first time it was filled, and whether we had it filled that first voyage or not. The other log books the captain sent home.

Q. Do you remember the tank being filled at all before this occasion? A. No, I don't think I do.

Q. Did you make any particular examination of 296
that part of the tank around the neighborhood of the broken rivet? A. Before?

Q. Before you loaded cargo for this voyage? A. No.

Q. Will you be able to state, from such examination as you did make, whether the rivet head was on or off at the time you left Grenada? A. I should say the rivet head was on when we left. It must have been on when we left, because we found it on top of the cargo.

Q. When did you find it on top of the cargo? A. When we found the tank was leaking, on whatever day it was.

Q. On the 5th of September? A. On the 5th of 297
September.

Q. How many rivet heads did you find off when you examined the tank on the morning of the 5th of September? A. Two, I think it was; two, yes. I picked up one, and the chief engineer picked up the other one.

Q. Did you see the chief engineer get the one that you say he got? A. I think I was up on the deck and looking after the plug when the chief engineer picked his one up.

Q. They were both found on the cargo, were they?

298 A. I think so, so far as I can recollect. I know mine was found on the cargo, the one I picked up.

Q. After you had picked up, or got possession of both of the rivet heads——

Mr. Black: He has not said he got possession.

Q. Did the engineer give you the other rivet head? A. I think so. I forget whether I had one or two rivets. I know I had the one.

Q. After you got the rivet heads that you did get, you and the engineer, was there any rivet head unaccounted for? A. I don't think so. I was too busy getting the cargo straightened out to learn much about the rivets then.

Q. What did you do with the rivet head finally
299 that you picked up? A. I believe I gave it to Mr. Kirlin.

Q. Did you go in the peak tank at all while you were in Grenada? A. No. The chief engineer was there.

By Mr. Black:

Q. In Grenada? A. In Grenada, or Trinidad, or on the passage, I forget which.

By Mr. Kirlin:

Q. What was the condition of the weather on the voyage from Grenada to New York, generally
300 speaking? A. I don't think I can remember without looking at the log book. I think we had strong winds.

Q. Did you have extraordinary weather on the voyage from New York towards Grenada in the month of August?

Objected to as irrelevant and immaterial.

A. Yes.

Q. What was it?

Same objection.

A. We met with a hurricane.
Q. On what date was that? 301

Same objection.

A. On the 20th of August.
Q. And how long did that hurricane last?

Same objection.

A. Until the 22d. This is not in my handwriting; I met with an accident.

Q. You met with an accident during the hurricane? A. Yes.

Q. Who kept the log? A. The second mate.
Q. What is his name? A. Theodore Ring.
Q. Do you recognize that as his handwriting? 302 (Log shown witness.) A. Yes.

Q. When do his entries begin? A. On the afternoon of the day of the hurricane.

Q. On the 20th? A. And until the morning of the 23d.

Q. Were you able to be about during that time? A. Yes; my hand only was hurt.

Q. What was the general condition of the weather and sea during that storm?

Same objection.

A. Very heavy.
Q. How did the ship behave during that time?

Same objection. 303

A. Labored and strained. Heavy seas.

Q. Did you use any means to abate the fury of the waves?

Same objection.

A. Oil.

Q. Are these entries which have previously been referred to as Claimants' Exhibit 5 an accurate description of the weather during that period?

Same objection.

304 A. Yes.

Q. When did you fill up the tank before you discovered the leak? A. On a Sunday evening, September 3d.

Q. What was the occasion of filling it? A. Because the ship was so much astern we thought she would go easier—steam better.

Q. What was the condition of the weather and wind during that time? A. Fine weather.

Q. In whose watch was the tank filled? A. In the 4-to-8 watch.

Q. Whose watch was that? A. The second engineer's watch and my own.

Q. Your watch? Who directed the tank to be
305 filled? A. I did—under the captain's orders.

Q. Was the ship stopped? A. No.

Q. How long did it take to fill it? Do you remember? A. About five or six hours. I don't remember. I was not on deck when the tank was full.

Q. What was the condition of the weather on the evening when the tank was filled? A. Fine weather.

Q. Is this entry on the 3d of September in your handwriting? A. Yes.

Counsel for claimants offers in evidence the entries for the afternoon of the 3d, as follows:

306 "12 Noon. Brisk breeze, fine weather, all sails set. "Course, N. N. W.; Wind E. by N.; 4.15, course N. "W. by W.; wind, E. by N.; 4.15, Navis, abeam dis- "tant 3 miles; 6; Basseterre (St Kitts) abeam.

"8 P. M. Wind N. E.; strong breeze and clear. "Log, 83 miles.

"9 P. M. Course, N. W. by N. 1/2 N.; wind E. "N. E.; pumps, lights and lookouts strictly attended "to.

"Midnight. Fresh breeze and clear.

"At noon observation: Latitude, 16° 26′ N.; "longitude, 62° 6′ W."

Q. What was the appearance of the iron on that part of the rivet head which you picked up? 307

Objected to on the ground that the witness is not competent, and that the rivet head is the best evidence of its appearance.

A. Clear break, as far as I could see.

Q. What was the appearance of the iron at the place of fracture?

Objected to on the ground that that is the best evidence.

A. I took no particular notice of it. It looked fair.

Q. Are you expert enough to tell whether a piece of iron freshly broken has a flaw in it or not? A. No; I scarcely think I should. 308

CROSS-EXAMINATION read by Mr. Black:

Q. How was the cargo that you had in this fore hold at the time of its receipt; in good or bad order? A. In good order.

Q. Did you take any note of what kind of cargo it was that was damaged? A. Cocoa. I noticed it was cocoa.

Q. Did you take any note of the marks? A. No; only when we were shipping it.

Q. At the time of its discharge in New York did you take any note of the marks or numbers of the damaged packages? A. No. Our clerks did on the dock. 309

Q. But you personally? A. Personally, no.

Q. Had you counted the packages or paid any attention to their receipt at the port of lading? A. Yes.

Q. Did you examine any of the bills of lading that were given for them? A. No.

Q. Didn't you ever see them? A. No.

Q. You signed receipts for them, didn't you? A. Yes, signed both receipts.

310 Q. What became of those receipts? A. They were sent to the agents.

Q. For what purpose were they sent to the agents? A. For the bills of lading to be signed on them, I suppose.

Q. And did not the ship have a list of the cargo which was loaded on board of her for the purpose of making up the ship's manifest? A. I suppose so.

Q. Who made up the manifest? A. The manifest was made at the office.

Q. What office? A. Agent's.

Q. In New York? A. No.

Q. At the port of shipment? A. At the port of shipment.

311 Q. Didn't you have anything to do with it afterwards? A. No, I had nothing to do with that.

Q. You had nothing to do with it? A. No.

Q. How many rivet heads have you picked up from ships you have been aboard of before? A. Well, old ships or new ships, old rivets or new rivets?

Q. No; new ships and new rivets? A. Might have picked up half a dozen or a dozen.

Q. Do you remember of having done so? A. No, not of having to examine them before.

Q. It is an uncommon thing to happen, isn't it, to have a rivet of a new ship come off? A. Yes, I think so.

312 Q. At the time you drove this plug where this water was spurting out, was the hole completely open, or was part of the rivet still in it? A. I didn't notice. The way the water was rushing out I should say the hole was quite open.

Q. Did you find any other hole through which the water was coming? A. No; the way the water was rushing along the tank, the flanges there, you couldn't scarcely tell.

Q. You did not see it spurting from any other place? A. No; not then.

Q. Did you at any time see these spurts at any

other place in that bulkhead? A. The next time we filled up the tank. 313

Q. When was that? A. I believe in New York, when the surveyor was down.

Q. Were you present at that time? A. I was not in the hold; I was looking down the hatch.

Q. You saw water spurting then? A. Yes.

Q. How many spurts did you see then? A. I didn't notice this tank so particularly.

Q. You saw some? A. Yes.

Q. Any more than one? A. I think so.

Q. When the other rivet head was picked up was it shown to you by the engineer? A. I believe it was.

Q. So you had it at some time or other in your hands, or in your sight, and know that two rivet heads were in existence which were found at the time this damage to cargo was discovered? A. Yes. 314

Q. What became of that other rivet head, so far as you know? Did the engineer keep it, or did you keep it? A. No, I only had one rivet head.

Q. The engineer kept one, did he? A. I suppose so.

Q. Did you make any search along this bulkhead to find out where that other rivet head came from? A. No, not myself. I believe the engineer and captain did.

Q. I am asking what you did? A. No.

Q. You did not, I understand you, go inside of the tank? A. No. 315

Q. Was the rivet head that you picked up lying directly in line below the place where the water was spurting on the top of the cargo? A. As far as I remember, I did not take particular notice to an inch or two.

Q. Was it fixed in your mind that your rivet head came from that hole? A. Came from that hole, yes.

Q. You associated them together? A. Yes.

Q. And did you definitely enough fix the location of that particular hole to say whether it was

316 where two plates lapped horizontally or vertically? A. No, I did not. If I did, I don't remember now.

Q. Did you fix its position with reference to other rivets so as to know whether it stood alone or was in line with other rivets? A. No, I took no notice.

Q. By any recollection, can you say now whether that rivet was the same size as the other rivets? A. No, I did not notice.

Q. How large was the hole which you plugged up? A. It seemed to be an ordinary rivet hole. I didn't measure it.

Q. Big enough to poke your finger through, I sup-
317 pose? A. Yes.

Q. Three-quarters of an inch or so? A. Yes, as far as I remember.

REDIRECT EXAMINATION read by Mr. Kirlin:

Q. Are you quite clear as to the number of rivet heads? A. I am not perfectly clear. I only know that I found the one.

Q. They wouldn't affect your recollection any? A. At the time when the tank burst, as soon as the captain and engineer were down, my desire was to get the cargo down and get the water out. I took very little thought about the tank after that.

Q. But do you remember seeing any other rivet
318 head in the engineer's hands besides the one you picked up? A. Yes, now, on second thoughts; but whether that was the one he picked up in the tank or another rivet I can't be sure.

Q. Would it refresh your recollection any to be informed that the engineer had testified that he did not pick up any rivet head?

Objected to. That is a method of refreshing one man's recollection by that of another man.

A. Yes, there must be two heads to the rivet; if I picked up one and he picked up the other one inside the tank. I know I saw him with one.

Q. The question was whether there were two off in the hole, or only one? A. That I can't remember. I only remember the one particularly. 319

RECROSS:

Q. Who was present at the time this tank was tested in New York, after the discharge of cargo here? A. When it was repaired here?

Q. Tested? A. Lloyds' surveyor.

Q. Congdon? A. Congdon and Captain Saunders.

Q. Mr. Martin? A. I don't know him. Who is he?

Q. A surveyor--a man with reddish whiskers? A. I don't remember whether he was there or not. 320

Q. Who did the repairs on it? A. I don't know. I believe it was the Morse Iron Works.

Mr. Kirlin reads deposition of RICHARD HOPKINS, taken on behalf of claimant, as follows:

By Mr. Kirlin:

Q. Were you carpenter on board the *Carib Prince* at the time the cocoa was injured by the leak from the fore peak tank? A. Yes; sir.

Q. The voyage was from Grenada to New York? A. Yes, sir.

Q. Last fall? A. Yes, sir.

Q. Did you see the cargo stowed in Grenada? A. Yes. 321

Q. In the No. 1 hold? A. In the No. 1 hold.

Q. How was it stowed? A. With fourteen or fifteen inches of dunnage on the floor.

Q. All over the floor? A. All over the floor, sir.

Q. Was it your business to make soundings of the different holds? A. Yes, sir.

Q. When did you do that on the voyage? A. Morning and evening, sir.

Q. How does the water get from the No. 1 hold to the engine-room? A. There is a pipe leads from the engine-room into the rose box in the bilges.

322 Q. Is there an iron bulkhead between the No. 1 and No. 2 holds? A. Yes, sir.

A. Are there any sluiceways on that bulkhead in the limbers? A. Yes, sir.

Q. Are they kept open or shut on the voyage? A. Shut.

Q When do you open them, if at all? A. In case the rose is blocked.

Q. At all other times are they kept closed? A. All times, yes, sir.

Q. What kind of a ship was the *Carib Prince* as to being water-tight? A. Very good, sir; very good.

Q. How much water did you usually find in the limbers? A. Say an inch or an inch and a half;
323 nothing to speak of.

Q. Where does your sounding rod go? A. Down to the bottom of the limbers.

Q. Do you remember on what day this leak was found? A. I think it was a Monday morning.

Q. How long before that had the tank been filled? A. I think it was Sunday night, but I am not sure about that.

Q. The night before you sprung the leak? A. Yes, sir.

Q. Did you sound the limbers in the No. 1 hold the night before you discovered the leak? A. I left word with the donkeyman when the tank was filled —or with a sailor—to tell me when the tank was
324 full.

Q. Did he notify you? A. Yes, sir.

Q. Did you examine it? A. Yes, sir, and found it full.

Q. Did you then examine the limbers in the No. 1 hold? A. I couldn't then; the cargo was in.

Q. Don't you sound the limbers every day when the cargo is in? A. Yes, sir; yes, sir.

Q. Then what do you mean by saying—— A. I mean I couldn't go down to see, to look inside. I sounded by all means.

Q. You sounded with the sounding rod? A. Yes, sir.

Q. Did you sound before they began to fill up the tank on that night? A. Yes, sir. 325

Q. And the next night? A. Yes, sir, certainly.

Q. And was it full both times? A. When I sounded at night, when I knocked off, the tank was full, and the next morning I sounded the tank and I found a deficiency in the tank; then I went to the limbers and I found there was water in it. I then informed the chief officer, and he and me went down and found the water in the No. 1 hold.

Q. On the night before you found the water in the No. 1 hold, did you sound the water in the No. 1 hold? A. Yes, sir.

Q. How much water was in the limbers? A. About an inch or two; I couldn't say exactly. 326

Q. Do you think it was the next morning after the tank was filled you discovered the leak? A. Yes, sir; it must have been, because I make an examination every morning and evening regular; so I think I am right in stating that.

Q. Did you go down below to help find out what was the cause of the leak? A. Yes, sir.

Q. And did you find it? A. Yes, sir.

Q. Did you do anything towards helping get the water out? A. Yes, sir; I bored holes to let the water run more freely in the limbers.

Q. And then it was pumped out of the engine room? A. Yes, sir; through these rows of boxes.

Q. Did you see the cargo when it was discharged in New York? A. Yes, sir; I think I was there. 327

Q. Did you take out the limber boards when you got to New York? A. Yes, sir; I do every voyage, to see if it is quite free for the water to run into.

Q. How tight were those limber boards? A. About middling, I should say; just a nice fit.

Q. Will water run through when they are down? A. Yes.

Q. Do you remember how tight you found them when you got to New York? A. Nothing to speak of; just as usual.

Q. Did you see the dunnage? A. Yes, sir

328 Q. As the cargo was discharged? A. Yes, sir.

Q. Was the dunnage in the usual way? A. Yes, sir.

Mr. Black reads CROSS-EXAMINATION:

Q. Did you have any fixed hour in the morning when you made your soundings? A. Yes, sir.

Q. What hour? A. About a quarter past six.

Q. Every day you made the soundings at that hour? A. Yes, about a quarter past six, and before five at night.

Q. How much before five? A. Say a quarter.

Q. Then you made them once in the morning and
329 in the evening? A. Yes, sir.

Q. Did you personally have anything to do with filling up the tank? A. Personally, sir; the chief officer, both donkeymen and myself see that the tank is filled all right.

Q. They pump the water from the engine-room through a pipe and into the tank? A. They pump it from the deck.

Q. How can they tell when it is full? A. Only by sounding, and when the air comes up the air pipe.

Q. That tells when the tank is full? A. Yes, sir.

Q. Whereabouts is the sounding well for No. 1
330 hold; at the after end, or forward? A. At the after end.

Q. Close up against the bulkhead? A. Close up against the bulkhead.

Q. Where is the key that works the sluiceway in that bulkhead? A. In the engine-room, in the stoke hole.

Q. That is worked by the engineer and not by you? A. It is worked by me as well as the engineer.

Q. Did you ever open that sluiceway? A. Yes, sir; I open it when I found the water wasn't going sufficient by the rose, then I opened the sluiceway.

Q. On this voyage? A. On this voyage; cer- 331
tainly.

Q. How did you find that the water wasn't going sufficiently fast for the rose? A. I thought not, sir; I wasn't sure, but going down———

Q. You went down in that hold? A. Yes, sir.

Q. How much water did you find down there? A. I couldn't tell exactly.

Q. Was it up to your ankles or your knees or up to your hips? A. Up to my knees.

Q. When standing on the dunnage? A. Yes, sir.

Q. And at that time you had removed the cargo from the limbers? A. Yes, sir.

Q. And you had removed it away at the after end close up to the rose? A. Yes, sir.

Q. And you saw the water gurgling and going 332
down? A. Yes, sir; and I thought it wasn't going fast enough, so I bored holes.

Q. How many holes did you bore? A. Five at each side, I should say.

Q. Five port and five starboard? A. Yes, sir.

Q. How big holes? A. Three-quarter holes.

Q. And the limber was a piece of plank running along the bilges and on top of the bilges? A. Yes, sir.

Q. And these holes were how close together? A. Six or seven inches together.

Q. All on the after ends? A. All on the after ends.

Q. How much water did you find on the forward 333
end of No. 1 hold? A. I couldn't say exactly.

Q. Was it over your boots? A. No, it wasn't over my boots.

Q. Midway of your leg? A. No.

Q. Up to your ankle? A. Up to my ankle; yes, sir.

Q. And that was top of the dunnage? A. Yes, sir.

Q. What kind of dunnage? A. All sorts—sort of wood.

Q. Rough wood? A. Rough wood; yes, sir.

334 Q. Thrown in loosely? A. Yes, sir; decent, you know, but not packed in tight, to allow the water and stuff to go through.

Q. These boxes of cocoa, were they wet? A. All the bottom tier seemed to be wet.

Q. Weren't any of the top tiers wet, too? A. Wet a little at the ends where the water was swashing up.

Q. The steamer would be rolling a little and the water would wash over? A. That is it exactly.

Q. You told me that you made soundings a little before five in the afternoon of that day; how long after that was it that the tank was filled; after the soundings? A I should think it would be nine
335 o'clock before the tank was filled up.

Q. What time did they commence to fill in? A. I can't say exactly; I should say about four o'clock; it takes a long time.

Q. They commenced to fill before you took the soundings? A. I kept sounding all the time she was filling up.

Q. I am asking about sounding in another place. You took the soundings at No. 1 hold a little before five o'clock; what time did they commence filling the tank with reference to that; before or after you had taken the soundings at No. 1 hold? A. I can't say.

Q. They filled the tank in the evening; isn't it
336 pretty sure that they filled it after you made your soundings? A. I can't be sure about that.

Q. You don't recollect that? A. I don't recollect that.

By Mr. Kirlin:

Q. Did you sound in No. 1 hold at the usual time? A. Yes, sir.

Q. On the evening when they filled up the peak tank? A. Yes, sir.

Q. And you found the water as you have previously stated? A. Yes, sir.

By Mr. Black:

337

Q. There was the usual amount of leakage—about an inch? A. Yes, sir.

Q. And you didn't ever pump it out much more closely than that? A. No, sir; I couldn't.

Q. Always left about an inch? A. Yes, sir.

DANIEL QUINN, being duly sworn and examined as a witness for the libellants, testifies:

By Mr. Black:

Q. What is your occupation? A. Iron shipbuilder.

Q. Connected with what company or works? A. 338
The Morgan Iron Works and Delaware River Iron and Ship Building Company.

Q. For how long? A. Thirty-five years.

Q. Have you had practical experience? A. Yes, sir.

Q. Know all the details of every branch of the business? A. I can't say as to that; I know some of it.

Q. The construction part of it you know all about? A. Yes, sir.

Q. Are you familiar with the way iron is put together in shipbuilding, iron and steel? A. That is my business.

Q. What is the phrase used among you gentle- 339
men when rivet holes don't correspond exactly one with the other and you want to fix it? A. They fair the hole.

Q. How is that done? A. By driving a drift pin in with a 4½-pound hammer.

Q. Is that what you call a drift pin, a tapered piece of steel? A. Yes, sir.

Q. The largest diameter of that would correspond somewhat near to the size of the hole which is to be driven? A. Yes, sir.

Q. And the smaller one, enough to enter where

340 they are not fair? A. Where they are not fair, yes, sir.

Q. In using that drift pin does it cut the iron at all? A. No, sir.

Q. What does it do? A. It upsets the hole so as to bring it to some angle to get the rivet in.

Q. What do you mean by upsetting? A. By driving that pin in a hole that is not fair it upsets one edge.

Q. What do you mean by "upsets"? A. Upsets the iron, drives the iron together, drives the iron together so it brings the hole fair at some angle so we can get the rivet in. The hole may not be squared with the plate, but at some angle so the rivet will
341 come in when it is hot.

Q. The effect of that is to enlarge the hole on both sides? A. It makes both oblong.

Q. Instead of round. In constructing a vessel with a ballast tank in her fore-peak, what part of the vessel is the knee-tie riveted to first, the side of the vessel or bulkhead? A. The plate is fitted in there and riveted wherever the rivet starts at; sometimes it is to the side of the ship and sometimes to the bulkhead.

Q. I want to know in a general way as to the method of construction. You have seen a great many English built iron ships? A. Yes, sir.

Q. Done repairs on them? A. Yes, sir; plenty of
342 them.

Q. Built at Glasgow and other parts of England? A. Yes, and France, Germany and everywhere else.

Q. What is the effect upon the bulkhead plates of a forepeak tank where the holes of the plate do not fair with the holes of the angle iron which is fastened to the knee-tie? A. It causes the lighter plate to buckle by driving the pin in. If the angle is heavier the light plate will buckle away from it until the hole becomes so the hole is perfectly fair at some angle or other to get the rivet in.

Q. If the last rivet, which connects the bulkhead

of a tank with the angle iron fastened to the knee- 343
tie, breaks off, what, in your judgment, would be the cause of that breaking?

Objected to. Taken subject to objection.

Q. If it was known to you that the holes of that rivet didn't fair? A. I would consider as long as the hole wasn't fair that probably it was crystallized; the rivet was probably broken after the tank had been made. Again, there is another cause for that. In fairing a hole like that, the rivet came in at an angle, and when the rivet was driven in it was driven when it was too cold and crystallized, because sometimes when the rivet does not come in very hot they will drive it anyhow, when it is black, especially 344
when they are doing piece work, and that rivet probably broke in the centre and both sides had stayed in the hole.

By the Court:

Q. If under such circumstances it broke, it broke exactly in the centre? A. In the centre between the two plates.

Q. That is where it would break? A. That is where it would break, and both pieces remain in there.

By Mr. Black:

Q. In this particular case the rivet head broke at 345
the outside of the tank-sheet or bulkhead? A. The clinch came off.

Q. And when that rivet was driven out of that hole, if it was found the hole did not fair, and it was the extreme rivet, the innermost rivet of the knee-tie, what would you say would be the cause of that breaking off? A. Extra pressure in the tank.

Q. You prepared a little diagram here showing the way in which the rivet holes not fairing would cause the plate of the bulkhead to spring off from

346 the knee-tie and angle-iron. Explain that if you will.

Mr. Kirlin: I don't understand that question.

A. Yes, sir.

Counsel for claimants objects, that there is no evidence the rivet holes were not fair after the rivet was out.

Q. Explain the diagram? A. That is right.

Q. What is the way in which that strain comes to produce the breaking of the rivet? A. By an extra strain inside of the tank if the tank wasn't full of water.

347 Q. I am asking about the rivet holes not being fair; when you bring the drift-pin into those holes to draw the rivet holes into line and some of the rivets are set up and clinched, does that produce any greater strain on one part than another?

Objected to, that the evidence is exclusive of any such theory as that. The testimony of the engineer showed that the plate had not been buckled by bringing the holes fair, because they were not fair, and this question relates to a situation where the holes had been made fair and buckled thereby; that it is a hypothesis not resting upon any evidence in the case.

348 The examination is suspended.

BENJAMIN J. CLARK, being duly sworn and examined as a witness for the libellants, testifies:

By Mr. Black:

Q. What is your business? A. Marine inspector and surveyor.

Q. How long has that been your business? A. Three years.

Q. Connected with what association or company? A. The National Board of Marine Underwriters.

Q. Have you been a sea captain? A. I have. 349
Q. How long? A. Thirty years.

By Mr. Kirlin:

Q. What kind of vessels? A. Sailing vessels.
Q. Wood or iron? A. Wood.

By Mr. Black:

Q. Have you inspected, in your three years' experience, very many iron vessels? A. I have.
Q. Are you familiar with them? A. Quite familiar.
Q. Did you visit the steamer *Carib Prince* in September, 1893? A. Yes, sir. 350
Q. On what date? A. September 15th.
Q. Did you go into her lower No. 1 hold? A. Yes, sir.
Q. Tell us what you found there as to the condition of the rivets of the peak-tank? A. I found two rivets entirely out and nine leaking.
Q. You say the rivets were entirely out of two of the holes; was there anything in the place of those rivets? A. Two pine plugs.
Q. What was the position of those holes where the two rivets were out? A. They were about on a line on the angle iron, little on the port side.
Q. Both of them on the port side? A. One on the starboard and one on the port side at the angle iron. 351
Q. Did they correspond in position; was one about the same distance from the side and the same height up? A. Same horizontally.
Q. How high above the floor of No. 1 hold were the rivet holes? A. I didn't measure it; I should judge about five feet.
Q. Somewhere up to your eyes as you stood on the floor? A. Yes.
Q. How far away from the side of the ship was the port one? A. About two and a half feet.

352 Q. And the starboard one how far from the side? A. I should judge about three or four feet.

Q. What were in those holes when you saw them? A. Soft pine plug.

Q. Did you remove either of them? A. One.

Q. Which one? A. On the port side.

Q. Describe what you found on removing that plug in respect to the fairing of the rivet hole through the plate, bulkhead plate and the angle iron at the top of the tie-plate? A. The iron wasn't fair between the two plates.

Q. You mean the hole? A. The iron on each plate wasn't fair.

Q. Did you find anything on the plug itself to
353 show whether it was fair or not? A. No, sir.

Q. Was the hole where the plug had gone through smooth all the way along? A. No, sir; it showed smaller on the inside than it did on the outside.

Q. The plug was a round one or oblong? A. Round.

Q. On the outside of the No. 1 hold side of the bulkhead it was round? A. On the port side, yes, sir.

Q. What was the difference of the untrueness of those two holes in respect of fairing? A. It didn't appear to be fair in the hole between the two plates.

Q. How much? A. I didn't measure it; I couldn't say.

354 Q. How much? A. About an eighth of an inch.

By the Court:

Q. One plate slipped by the other an eighth of an inch? A. Apparently. It was rounded on the edge of the inner plate.

By Mr. Black:

Q. Did you pull the plug of the other hole? A No, sir; I didn't pull the plug of this.

Q. Who did? A. The chief engineer.

Q. You saw it in his hands? A. I took it in my 355
hand after he pulled it.

Q. How about the plug on the other? A. He didn't offer to pull it, nor I didn't pull it.

CROSS-EXAMINED by Counsel for Claimants:

By Mr. Kirlin:

Q. Did you put your fingers through that hole? A. Yes, sir.

Q. Was there a sharp edge to the inside of the hole on the angle iron where it came against the plate? A. It was battered; the iron was on the inside plate.

Q. How could you tell that? A. By my finger. 356

Q. What was the evidence of its being battered? A. The rough smoothness of the iron where the bolt had gone through.

Q. How could you tell the extent to which it didn't fair accurately? A. By the looks of my eye; by my eye.

Q. Was it light there? A. It was light from the hatch; the whole hatch was off.

Q. Was there any light in the fore peak? A. No, sir; it didn't require it.

Q. Could you see from a light place in to a dark place? A. I could see enough to see the two plates.

Q. Can you swear accurately as to how much the holes lacked of being fair? A. I could not; I didn't 357
measure it.

Q. Pretty hard work to swear between an eighth and a sixteenth of an inch, wouldn't it be? A. I think it would.

Q. The angle iron was on the inside of the tank, was it not? A. Yes, sir.

Q. Did you notice whether it came tight up against the plate of the bulkhead? A. I didn't go inside of the tank.

Q. You put your finger in? A. From the outside of No. 1 hold.

358 Q. As you put your finger in there did you feel any space between the inside of the bulkhead plate —that is, the side in the tank -and the side of the angle iron which was next to the plate? In other words, did the angle iron appear to be sprung off any from the plate? A. I couldn't tell about the angle iron, but I could run my finger through it; I couldn't feel any space between the angle iron and the plates.

Q. It was just smooth where you put your finger there? A. It was just smooth.

Q. Except as you have specified? A. Except where I put my finger on the turn of the two plates one was little more off on the starboard than on the
359 port, inside.

Q. What plate do you mean; what two plates? A. The two plates riveted together upon the angle iron.

Q. How many plates were there altogether? A. I didn't count them.

Q. Were there more than two? A. Yes, sir.

Q. What would the third one be; one would be the bulkhead and the other the angle iron? A. The whole bulkhead is constructed of plates.

Q. There wasn't but one bulkhead plate? A. That is all.

Q. Another plate was the angle iron; what was the third? A. There was a lap on the plates.

360 Q. The lap on the plate and the angle-iron——

By the Court:

Q. Did it go through three thicknesses of iron or two? A. Two thicknesses and the angle iron.

By Mr. Kirlin:

Q. Which one was it wasn't quite fair, the angle iron or the bulkhead at the other plate? A. It was the second plate.

Q. The innermost plate? A. Yes, sir.

By the Court:

Q. The middle plate? A. The middle plate; yes, sir. 361

By Mr. Kirlin:

Q. It appeared to be about a three-quarters of an inch hole? A. About a three-quarters of an inch hole; I didn't measure it.

DANIEL QUINN resumes the stand and testifies:

By Mr. Black:

Q. Now I come back to my original question; I will repeat it in these words: Suppose that the fore peak tank was formed by a bulkhead of plates crossing the vessel athwartship and riveted to an angle iron and knee-tie, which angle iron and knee-tie were riveted to the side of the ship: what would be the effect on that bulkhead of the rivet holes not fairing, if anything? 362

The Court. This water came through a hole and that is the hole we are speaking of that is not fair.

Mr. Black: I contend that the effect of not fairing the rivet holes on the horizontal line will be to bring a strain on that bulkhead at the extreme end of this knee-tie, which was the rivet which broke off in this case.

Mr. Kirlin: There is no evidence that any other hole was not perfectly fair. 363

Mr. Black: Not beyond the fact that they testify on their commission in England that there was a drift-pin constantly used in construction.

The Court: I cannot find from that evidence that there is a row of rivet holes that is not fair, as your picture shows.

Q. The clinch of a rivet on the bulkhead which forms the fore-peak ballast tank has broken off;

364 that is the extreme innermost rivet on a line of rivets which connect that bulkhead to the knee-tie, which is riveted as well to the side of the ship; what, in your judgment, would be the cause of the breaking off of that clinch of that rivet?

Mr. Kirlin: The next two rivets to that also started; that should be asked.

A. There are several causes for that.

Q. State what they were? A. In the first place, one cause would be that the plate, that the gusset-plate fitted to the side of the ship and also fitted to the tank, wasn't well fitted; that the holes were not
365 punched fair on the side of the ship or not fair on the bulkhead, where in pinning them together to rivet the angle iron to the top of the gusset-plate, which put the strain either on the side of the ship or bulkhead.

Q. You say "gusset-plate"; what do you mean by that? A. That is the knee-tie; they are the same thing.

Q. On which of the rivets of that knee-tie would the greatest strain come if the holes were not fair?

Mr. Kirlin: That would depend on which ones were not fair apparently. I object.

Q. Does this diagram show what you mean by
366 not fairing on the gusset-plate? A. Yes, sir.

The diagram is offered in evidence as an explanation.

Objected to, that it appears on the examination of it that out of seven rivets, all of them are at least half out of the way, and there is no evidence in the case that any kind of holes did not fair except one.

It is marked Libellants' Exhibit 2.

Q. Did you also prepare me a diagram showing what would be known as buckling of the plates caused by that same effect? A. Yes. 367

Counsel for claimants objects that there is no evidence in the case of any buckling. It is without foundation.

The second diagram is offered in evidence and marked Libellants' Exhibit 3.

By the Court:

Q. Have you given all the things that could make that clinch come off? A. No, sir.

Q. Give some more? A. I will give another one. If the ballast tank was not sufficiently braced in the centre and those knee-ties extended only four feet from the side of the ship, and the tank was only half full of water, and the ship heaving and pitching in the seaway, it would bust those rivets off. 368

Q. Shall I understand that the rivet heads of a rivet like this have sometimes broken by seaway? A. Yes, sir; that is another cause. Another cause would be crystallization of the rivet or hammering on it when it is cold.

By Mr. Kirlin:

Q. Another, bad iron? A. And another might be that it was very poor material. That is four. Another one would be by putting extra pressure on the tank when the top is full of water and the pump working on the tank and the tank full. 369

By the Court:

Q. That is to say, where there is any unusual strain it is common enough to have them break off the clinch.

370 By Mr. Black:

Q. If the rivet holes didn't fair, and were found not to fair when the rivet broke and came out, would that in itself cause a weakness to the rivet, to the clinch of the rivet?

Objected to unless the witness states how much.

A. If a rivet is driven in at an angle, it has not the same strength as a rivet driven through a fair hole.

CROSS-EXAMINED by Counsel for Claimants:

371 By Mr. Kirlin:

Q. How long have you been working in iron? A. Since 1855.

Q. As an old and experienced shipbuilder, you don't mean to say that a rivet would be very much weakened, a three-quarter-inch rivet, by being from a 16th to an 8th of an inch out of line if it was put in hot and properly riveted, do you? A. I do.

Q. How much? A. I maintain it would take off about one-third of its strength; and I will explain that to you if you wish.

Q. How much is the strength? A. About 6,000 pounds would be about the strength of a three-quarter rivet. That is an inch and three-quarters
372 clinch; to pull that off, it would require that pressure.

Q. I understand the effect of your evidence to be that having the rivets in holes that were not fair subjects the rivet to a greater sheering strain, not to a greater fore-and-aft strain? A. To a greater fore-and-aft strain.

Q. Is that what you mean? A. I do.

Q. It wouldn't make any difference in the sheering strain? A. The sheering strain would be acted upon by the pressure on the outside of the vessel athwartships.

Q. If next to the rivet head which was gone off wholly two rivet heads were started, and if you were informed that the rivet head which was gone, was broken with a fresh break, would your judgment be affected at all by those circumstances? A. By the circumstances of what way the tank was in at the time; that is the way my judgment would be affected. 373

Q. If you were informed that the two rivets next to the one that broke had started by apparently the same strain which broke the one, and that the one when broken broke with a fresh break, would that indicate to you that the breakage was due to latent defect, or to the hole in this particular case not being quite fair, or to the fact that there has been some overstrain which affected all three of these rivets alike? A. That there had been some overstrain I should judge to break them off. 374

By the Court:

Q. Would you reject a piece of work where a three-quarters of an inch rivet had been driven in hot, the hole not fairing from the 16th of an inch to little more, perhaps? A. No, sir; it is done every day.

Q. And called good work? A. Yes, sir.

REDIRECT by Counsel for Libellants:

By Mr. Black: 375

Q. At the same time you would say it weakens the rivet to drive it in in that way? A. Yes, sir.

Q. Does it also produce a greater or necessitate a greater degree of pounding to get that rivet in? A. Only the head don't lay up fair on the inside and it causes the head to be bent, which may cause fracture of the head inside if the head is a little cooler than the clinch.

Q. You have made these models, showing the form in which the iron is put together? A. I have.

376 Mr. Black: I offer them in evidence to show the resemblance.

Mr. Kirlin: They are not shown to have any resemblance to the original.

Mr. Black: The testimony of the witnesses are that that tank was filled on the 3d. There is no entry like that on the log, but on the date of the 5th of September is the entry——

Mr. Kirlin: The log was not kept by any servant of the shipowner or ship.

Mr. Black: The entry is:

" 5th of September, 1893, Tuesday. On sounding the fore peak tank this morning it was discovered to have been leaking, and on taking off the fore hatches
377 a quantity of water was found in the lower hold, damaging the cargo of cocoa, bitters, and so forth. The wings were cleared on the after part and the water drawn away as fast as possible, and the tank at once was pumped out."

Mr. Kirlin: I object to the entry on the further ground that it appears from the oral evidence taken that this leak was discovered on Monday. It makes this difference, that I think these men in order to exculpate themselves from the impropriety of filling that tank while the ship was going, have put that entry in there on the wrong date to try to make us believe that they had it filled a day before they
378 discovered the leak.

Admitted subject to objection.

Adjourned to Monday morning, June 18, 1894, at 11.30 o'clock.

BROOKLYN, N. Y., June 18, 1894. 379

Met pursuant to adjournment.

OWEN MCGOWAN, being duly sworn and examined as a witness for the claimants, testifies:

By Mr. Kirlin:

Q. What is your occupation? A. Foreman shipbuilder and boiler maker for John N. Robbins.

Q. Did you do any repairs on the *Carib Prince* last September at your yard? A. No, sir; not at the yard, but at her pier.

Q. You were called to do some work on her, were 380
you? A. Yes, sir.

Q. For Mr. Robbins? A. For Mr. Robbins; yes, sir.

Q. Where did you go? A. Where did I go?

Q. Where was the ship? A. Laying up at Hunter's Point. I think at the foot of Seventh street.

Q. You did some work about the rivets in the bulkhead? A. Yes, sir; in the water-tight bulkhead forward.

Q. How many rivets did you find leaking? A. In all I think about seven or eight required to come out.

Q. Was there any in the countersink off? A. There was one, I think one.

Q. What was that on? A. It was in the bar running athwartship about five or six feet from the bottom, I should say. 381

Q. Was that what was known as the knee-tie? A. The knee-tie; the fore-and-aft side of the tank running athwartship, on the bulkhead; one was gone; the countersink was off on the starboard side.

Q. Did you knock out any rivets in that plate and put in any others? A. We knocked out two or three on that bar and some on the side of the tank.

382 Q. After you knocked out those two or three what was the condition of the holes; were they blind or fair? A. The holes were all right. It couldn't be blind where you put a rivet $\frac{7}{8}$ or $\frac{3}{4}$ out and put one in again. I don't remember whether they were $\frac{7}{8}$ or $\frac{3}{4}$.

Q. These rivets went through two or three pieces of iron? A. They went through down in this case, the angle iron and the plate itself.

Q. There was a hole in the plate and a hole in the angle iron? A. Yes, sir.

Q. Now, what I want to know is whether those two holes were right opposite each other or not? A. They were right opposite as near as is practi-
383 cable; we couldn't say to a thousandth part of an inch, but as near as is practicable in the work of good shipbuilding.

Q. Were they near enough to get a rivet of the size of the hole in? A. Oh, yes; we drove them up.

Q. Did you do the work? A. I directed the driving of them; my men did it.

Q. You had charge of the job? A. I had charge of the job.

Q. Were there some on the other side? A. Some on both sides, on this bar running athwartship.

CROSS-EXAMINED by Counsel for Libellants:

384 By Mr. Black:

Q. Whom do you work for? A. John N. Robbins.

Q. How long have you been in their employment? A. Four years, in charge of the work.

Q. What is your position? A. Master shipbuilder and boilermaker.

Q. Whom did you get your instructions from to go up to the *Carib Prince?* A. My instructions come through our office, from our superintendent.

Q. What were they? A. To go to the *Carib Prince,* at the foot of Seventh street, Hunter's

Point, and find out what was the matter with the water-tight bulkhead forward in No. 1 hold. 385

Q. Did you go alone, or take some men with you? A. I went alone.

Q. Do you remember the date? A. I can't exactly say; some time about September.

Q. Might it have been October? A. I have the dates in my time book.

Q. Let us have the date? A. I haven't it here with me.

Q. Did you look at it this morning? A. Yes, sir.

Q. Didn't you know you would be wanted to fix the time? A. No, sir.

Q. How many times did you go there? A. Once.

Q. Only once. What did you do the time you went there? A. Examined the work and found out what was to be done. 386

Q. Then you sent men to do the work? A. Yes, sir.

Q. You were not there when the rivets were knocked out yourself? A. No. One rivet was out while I was there.

Q. You didn't see the other rivets knocked out? A. No.

Q. You only saw one gone? A. Yes, sir.

Q. Was there anything in that hole where the rivet had been when you went there? A. Nothing, practically; the countersink was off; nothing but the head hanging on.

Q. What do you mean by "countersink"? A. The side the rivet was drove on; there is a head and point on the rivet and it was drove on the pointed side. 387

Q. Is this the kind of rivet you use which I show you? A. Yes, sir.

Q. Which do you call countersunk, the big end or point? A. We drive on this point and it is drove to another head and forms the countersink.

Q. The countersink is what is called the clinch? A. We don't call it that.

388 Q. But you mean the same thing as the clinch? A. No, we never apply that term to it.

Q. You have heard the word "clinch"? A. Yes, sir; but we don't use that term for it. It is what I call driving a countersink head on the rivet.

By Mr. Kirlin:

Q. The place where this end is driven on to fit in is countersunk in the plate? A. Yes, sir.

By Mr. Black:

Q. What you call countersunk is where the end of the rivet is headed up to fasten two plates to-
389 gether? A. Yes, sir.

Q. Where was this one hole where there was no rivet, on the bulkhead? A. On the athwartship bar about six feet from the bottom, on the bulkhead.

Q. Are you speaking of a bar on the inside of the tank? A. On the inside of the tank; yes, sir.

Q. Were you in the inside of this tank? A. No, sir.

Q. How did you find out this rivet was gone from the bar on the inside of the tank? A. You could see it while you stood and looked at it.

Q. Did you have a light? A. There was plenty of light; it was daylight.

Q. Did you see any place where there was a plug driven in any rivet hole? A. No, sir; no, sir.
390

Q. Did you look on the starboard side of that same bulkhead to see whether there were any rivets broken on that side? A. I looked on the starboard and port sides and marked what was to come out and ordered it out.

Q. Did you make a written report of what you found? A. Yes, sir.

Q. What has become of that? A. I returned that to the office.

Q. Please produce it? A. I don't know as I can produce it now. It might be in our office.

Q. You knew you were going to testify about this thing? A. I understand about that. 391

Q. Have you looked at that written report? A. No, sir.

Q. How many men did you send up to do that work? A. One gang of riveters.

Q. How many men? A. Four.

Q. Are they here in court? A. They are not; no, sir.

Q. Are any of them here in court? A. No.

Q. Was there a bolt with a nut on it in that rivet hole when you visited there? A. No, sir.

Q. Did you know of any bolt with a nut on it being put in there for the purpose of temporary repairs? A. Not visible to me at the time I looked the work over. 392

Q. How long after you went there were the men sent to do the work? A. The following morning.

Q. They were instructed to make permanent repairs? A. They were instructed to make repairs satisfactory to the engineer.

Q. You sent with them what set of tools? A. The number of rivets required to do the work.

Q. With a forge to heat the rivets in? A. Yes, sir.

Q. And the necessary appliances for heating and putting them in hot? A. Yes, sir.

Q. And to do it just as if you were doing new work on a new job? A. To do it to the engineer's satisfaction. 393

Q. To do it just as if you were doing new work on a new job? A. To do it to the best of our ability.

Q. Did you make any inspection of that particular hole where the rivet was missing? A. No, nothing particular; nothing special.

Q. Do you remember the size of it? A. Not to a sixteenth of an inch.

Q. Do you remember to an eighth of an inch? A. No, I do not. Indeed we don't do that fine.

394 Q. Was there a double row of rivets there, or single? A. Single on the one bar.

Q. Only one angle iron? A. That was the bar that was damaged. Yes, one angle iron.

Q. And this one rivet that was gone was at the extreme end of the gusset-plate? A. No; not exactly at the extreme end.

Q. It was the last rivet, wasn't it? A. I couldn't say as to that certainly.

Q. Do you know or have you heard that temporary repairs were made upon this bulkhead prior to your men going up to make the final repairs? A. I didn't know anything about it.

Q. Where that bulkhead comes that is formed of
395 sheets of metal, isn't it? A. Yes, sir.

Q. How do those sheets run, horizontal or perpendicular? A. Perpendicular, to the best of my opinion now.

Q. What fastens those sheets together? A. They fasten to each other.

Q. Are they lapped or butted? A. They are lapped.

Q. And a row of rivets where the laps come? A. Yes, sir; a row of rivets.

Q. Was the hole of the rivet that was gone through one of those lap-joints or not? A. That I can't be certain of now.

396 THOMAS CONGDON, recalled for claimants, testifies:

By Mr. Kirlin:

Q. There is some discrepancy between your testimony and the testimony of one of the other witnesses as to where the rivet was in the bulkhead, that was gone. Did you make any note of that? A. No. My notes are to the effect that there were several rivets in the bulkhead strained and leaking; I didn't specify where they were. When I said on Friday they were in the vertical bar, that is to the best of my recollection they were there.

Q. The vertical and horizontal bars are not far apart? A. No; one might easily be mistaken on looking at the outside of the bulkhead. 397

Q. So you may have been in error? A. It is only according to my recollection.

Q. Was there any rivet gone on the bulkhead but the one? A. No; I only saw that one.

Q. Do you know whether there is any rule amongst navigators as to filling tanks at sea, whether a vessel should be stopped or whether they can fill them in motion? A. The rule of common sense is the only rule I know about. It is a very unwise thing to fill a tank at sea.

Q. What do you say as to the prudence of filling a tank with the ship going ahead? A. I should say it was a very improper thing to do. 398

Q. Why? A. Because when the tank is partly full of water and the ship is in motion it swashes about and is liable to break on the bulkhead. I have seen a bulkhead knocked flat on the ship's bottom where the tank has not been full; the ship rolling and water swashing knocked the bulkhead right down.

CROSS-EXAMINED by Counsel for Libellants:

By Mr. Black:

Q. Did you notice how high the stand-pipe of the forward tank was? A. No; I did not.

Q. You made a statement here the other day when you were on the stand to the effect that that tank came up to the main deck of this ship. Are you prepared to say that now? A. What I call the main deck is below what is called the spar deck. There is one deck above the tank deck. 399

Q. The tank deck was on the line of the between-deck beams, wasn't it? A. I think there is one deck above that.

Q. That tank has been testified to be 20 odd feet deep. Would you, from your recollection of that

400 vessel, say whether she had any height above that 20 feet more than the space of the between-decks? A. I should say she had one height of between-decks above that, as far as I can recollect, above the top of the tank.

Q. How high was that above the between decks? A. Seven feet.

Q. That would make the distance from the floor of the vessel up to the level of the main deck 27 odd feet, wouldn't it? A. You are calling the main deck——

Q. I am calling the main deck the top of all the decks? A. That is the top, the spar deck. I think I am right in calling that the spar deck of the ship,
401 and the main deck would be the next below,

Q. The deck on which the hatches are, which is the top deck for taking in the cargo before you lower it to the hold; is that not called the main deck? A. I call that the spar deck.

Q. Below the spar deck or main deck was there a space before you came to the top of the tank? A. One space of about seven feet.

Q. Wasn't there a stand-pipe in that space? A. No. The stand-pipe is taken away when the tank is finished; it isn't left there.

Q. They connect the tank with the pump, do they not, in order to fill it? A. Yes, sir.

Q. Isn't that done through the stand-pipe? A.
402 The water is forced from the donkey-pump up into the tank; it doesn't come to the top.

Q. Is that your knowledge? A. That is the common way.

Q. Are you aware that the *Carib Prince* was, or was not, built in that fashion? A. I can't say; I don't remember.

Q. If the officers of the *Carib Prince* testify the tank was filled from the deck and not from below? A. They were probably right.

Q. Then there would be a stand-pipe, wouldn't there? A. It isn't necessary; that is not necessary.

Q. Do you know anything about hydraulic pressures? A. Tell we what you want to know. 403

Q. Do you know how many additional pounds or tons pressure is brought on a bulkhead by the increase of one foot in a stand-pipe? A. Yes, sir.

Q. In a bulkhead of the size of that of the tank of the *Carib Prince* how much additional pressure would be brought on that bulkhead? A. I must know the area of the bulkhead.

Q. You saw the bulkhead, didn't you? A. I will tell you that about six or seven or eight inches rather, in this stand-pipe would be about a pound pressure on each square inch of the bulkhead, and you can easily calculate the whole thing.

Q. Would a pressure of that much on that bulk- 404
head be as great as, or greater than, the pressure caused by the water being in movement when the tank was not full? A. Nothing to compare it to; you can't compare the two.

Q. You think there is nothing in the nature of forces that you can compare between pressure and impulse? A. The swash is the more severe of the two on the bulkhead, most decidedly.

Q. If the sea is smooth and the steam vessel is not rolling, would the tanks suffer any extraordinary strain by being filled at sea? A. If the water is perfectly smooth, of course it couldn't suffer. If there is motion of the ship, either rolling or plunging, it naturally would.

Q. If there is no such motion, there is no danger 405
of that? A. Quite so.

Q. It is due to the surge of the water coming with an impact on the bulkhead? A. Exactly.

Q. Wouldn't such an impulse as that have a tendency to snap off a great many heads of rivets? A. I have seen a bulkhead knocked right down.

Q. That meant a great many heads were torn down? A. I don't know what preceded it.

Q. Can you tell me for what purpose, in the con-

406 struction of iron steamers, there will be bilges put in her and limber boards put on top of those bilges? A. Yes.

Q. What is the purpose? A. To make a water-course there.

Q. To make a water course in the interior of the vessel? A. In the bilge of the vessel.

Q. And to keep the holds dry? A. And to keep the holds dry.

Q. And to protect the cargo from being damaged by an accumulation of water? A. Yes, sir.

By the Court:

407 Q. And the limbers are to take out; the purpose of the limbers is to reach the bilges and clean them out? A. The limbers are boards covering the water-course.

Q. And they should be made so as to lift out? A. They are always made so.

Q. Are you speaking of your knowledge or your supposition? A. My knowledge.

Q. Have you examined all the limbers of all the ships that have been inspected? A. I have seen thousands.

Q. Have you in some instances seen them so tight they wouldn't lift out? A. I don't think I have.

Q. It hasn't been your duty to examine the lim-
408 bers of all the vessels you have seen? A. It is the easiest thing in the world to lift limbers where I have seen it done.

Q. When it became necessary to bore holes in those limbers to let water out, doesn't it show you the limbers are too tight? A. No.

Q. Doesn't it indicate that the water wouldn't run through—the purpose of boring holes to let the water through?

Mr. Kirlin: I object.

FRANK S. MARTIN, recalled for claimants, testifies: 409

By Mr. Kirlin:

Q. What is the date of the survey you made on the *Carib Prince?* A. September 11th and 12th.

Q. How long was that after she got in? A. About a couple of days.

Q. Did you examine the rivet heads in the strengthening pieces as well as in the cross-bar? A. I did the second day, yes, where they were leaking; I saw them on the second day after the tank had been filled; then I examined the rivets there.

Q. Was there any rivet gone on the strengthening pieces? A. No.

Q. You heard Mr. Congdon's testimony? A. 410
Yes.

Q. Was he in error as to where the rivet head was that was gone? A. I think he was.

Q. You examined the same place where his recollection was that the head was gone, did you?

Objected to as an inference.

Q. Did you see any head gone there? A. I didn't see any.

By the Court:

Q. You didn't see any rivet gone? A. Yes, I did; 411
I saw one, but not in the place Mr. Congdon saw it.

By Mr. Kirlin:

Q. Did the knee-tie extend over as far as the first lap in the plates in the bulkhead? A. No, sir.

112 HERBERT VERNON SAUNDERS, recalled for claimants, testifies:

By Mr. Kirlin:

Q. Do you know anything of the class of this vessel as compared with other vessels of her size?

Objected to as immaterial and as hearsay. Taken subject to objection.

Q. What is your relation to Mr. Knott, and the source of your knowledge? A. I had direct communication in my office from Mr. Knott himself when the question about this boat was raised, to prove——

Objected to.

413

Q. Do you know anything more about it; were you in England when she was built? A. I was in England when she was finished; I was on her trial trip; I saw the last test made of the ship.

Q. Did you see or know anything then as to what her cost had been, from the owners or builders? A. I know she cost considerably more than the ordinary steamer.

Counsel for libellants objects to the answer as hearsay, and moves to strike out all the testimony with regard to the cost of the steamer. Motion denied.

414 Q. Do you know Captain Legge, who commanded the *Carib Prince?* A. I do.

Q. Who commanded the *Carib Prince* at the time of this accident? A. I do.

Q. How long have you known him? A. About twelve months.

Q. What other commands has he been in besides this? A. The steamship *Alps* belonging to the Atlas Line.

Q. Is he now in command of another vessel? A. Now in command of the steamship *Irrawaddy.*

Q. Does she belong to Christall? A. She belongs to Mr. Christall.

Q. Do you know of his skill and capacity as a mariner? A. I know he has a first-class certificate as master mariner. 415

Q. Do you know the engineers and officers? A. I know the chief engineer is what we call a "guaranty man."

Q. Do you know anything of the qualifications of Captain Scott now in command of the vessel? A. I know we consider him a good man.

Q. Has he been in command before? A. He has been in command before.

Q. And Captain Legge also? A. And Captain Legge also.

Q. Your criticism of him relates solely to the filling the tank on this particular occasion without stopping the ship? A. Yes. 416

CROSS-EXAMINED by Counsel for Libellant:

By Mr. Black:

Q. When did you first know Captain Legge? A. Last June.

Q. That is when this vessel came out new, isn't it? A. That is when the vessel came out new.

Q. He was the captain who came on board of her in England, or wherever she was finished, to bring her over to New York, was he? A. He was sent over by Mr. Christall to superintend the building of the ship. He was on the ship four or five months before she left the yard. 417

Q. What did you say about "sent over"? A. He was sent over by Mr. Christall.

Q. How do you know that? A. I know it.

Q. Somebody told you? A. I was there and saw him there.

Q. How do you know because of seeing him there that Mr. Christall sent him there? A. Because I know he represented Mr. Christall.

Q. Somebody told you? A. Nothing of the sort.

Counsel for libellant moves to strike out the testimony of the witness concerning Captain

418 Legge being sent over by Mr. Christall as hearsay. Motion denied.

Q. Didn't he bring that vessel over to New York? A. He did.

Q. Wasn't Mr. Keyes the chief engineer who brought the vessel over? A. He was.

Q. And the other engineers and first officer came over? A. The first officer did not.

Q. Mr. Scott? A. Mr. Scott.

Q. He joined her here? A. He joined her here.

Q. From what ship? A. I believe he came out of the *Alps*.

Q. And the carpenter, was he in her when she came over? A. The carpenter was.

419 Q. Does the *Irrawaddy* belong to the same owners as one of your line? A. No, sir.

Q. He is running for Christall? A. She belongs to Christall.

By the Court:

Q. Where does Christall live? A. In New York.

Mr. Black here sums up the case for libellants.

Mr. Kirlin: If your Honor please, Mr. Black in his argument makes a suggestion about the strain coming in a certain place, and Captain Saunders in-
420 forms me there are beams inside of the tank. I would like to show that additional fact, and that the strain does not come from the side of the ship, but is taken by the transverse beams in the tank itself.

Mr. Black: My witnesses are gone, and I have no way of meeting that. This is not the proper time to go into that question.

Objection overruled.

Mr. Black: I may wish to take evidence out of court to meet evidence of this kind.

The Court: As to this point, certainly.

HERBERT VERNON SAUNDERS, recalled for claim- 421
ants, testifies:

By Mr. Kirlin:

Q. Have you ever been in the peak-tank of the *Carib Prince?* A. I have.

Q. Are there any fore-and-aft strengthening beams inside of the tank? A. Not strengthening beams; the tank is strengthened with stringer plates which run from the stem to the bulkhead; there are three rows. Beside the deck that tank is again supported by what we call panting-beams; they go from side to side.

Q. Crosswise? A. Yes, below the between-decks.

Q. You said there was three rows of these beams? 422
A. Three rows of these stringers fore-and-aft; they connect at the stem and run to the bulkhead one above the other.

Q. How many beams are there fore-and-aft? A. No beams fore-and-aft. These stringers run fore-and-aft.

Q. How many stringers are there? A. Three leading from the bow to the bulkhead.

Q. To the middle of the bulkhead? A. No, not to the middle of the bulkhead. They run along the side of the ship.

Q. In the open space at the tank itself? A. They are connected with the side of the ship and on to the bulkhead. They are not formed like that (re- 423
ferring to Exhibit 4); that is entirely wrong. The strain on that and on a stringer plate would be entirely different.

Q. There are three altogether? A. Three on each side. The tank is strengthened this way: First the floors, then the panting-beams, then the orlop-beams and then the deck or top of the tank.

Q. Are the panting-beams fastened on to the bulkhead at all? A. The panting-beams are fastened on the ship's side.

424 Q. Are there any fastenings which lead to the bulkhead? A. No.

Q. Have the stringers? A. The stringers are fastened on the bulkhead.

Q. How far from the side of the ship? A. The stringers are about 2 feet 6 wide.

CROSS-EXAMINED by Counsel for Libellant.

By Mr. Black:

Q. You mean by stringers horizontal plates running along the side of the ship parallel with the line of the keel? A. Parallel with the line of the keel.

Q. You say that on each side there are three such
425 stringers in the fore tank? A. Three.

Q. How far apart in vertical height are those stringers? A. About four to five feet.

Q. How wide, running horizontally from the side of the ship are those stringers? A. About two feet and a half.

Q. And those stringers run until they butt up against the bulkhead? A. They butt up against the bulkhead.

Q. And are attached to the bulkhead by angle irons? A. And are attached to the bulkhead by one angle-iron.

Q. Each one? A. Each one.

Q. A single angle-iron on top of the stringer? A.
426 A single angle-iron on top of the stringer.

Q. At the square formed by the bulkhead coming against the stringer is there a gusset-plate or knee-tie? A. Not that I am aware of.

Q. So the stringer operates as a stringer would if it were there, doesn't it? A. It does.

Mr. Kirlin here sums up the case for the *Carib Prince*.

Claimant's Exhibit No. 3. 427

TRINIDAD LINE.

AGENTS:

GEORGE CHRISTALL & Co., New York.
TURNBULL, STEWART & Co., Trinidad.
GREGOR TURNBULL & Co., Glasgow.
WADE & ABBOTT, St. Kitts.
GEO. W. BENNETT & Co., Antigua.
JNO. MCCALL & Co., Tobago.
THOS. DANIELS & Co., Ltd., Barbados.
WM. MACINTYRE, Dominica.
MARTIN DEAN & Co., Grenada. 428
E. BRUMANT & A. BEAUPERTHAY & Co., Gaudeloupe.
T. BLAISEMONTE, Martinique.
MINVIELLE & CHASTANET, St. Lucia.
GEO. H. IRISH, Montserrat.

A. M. & C	250	cases
P & T	250	"
	500	"

SHIPPED, in good order and well-conditioned, by Dr. T. G. B. Siegert & Sons on board the screw steamer *Carib Prince*, whereof E. C. Legg is Commander, now lying in Gulf of Paria and bound to 429 New York, U. S. A., with liberty to sail with or without Pilots, to tow or assist Vessels in all situations, or to be towed, and to call for any and all purposes at any Port or Ports without being deemed a deviation.

500 Cases Angostura Bitters

being marked and numbered as per margin: to be delivered from the Ship's deck, where the Ship's responsibility shall cease, in the like good order and

well conditioned, at the aforesaid Port of New York. The Act of God, the Queen's enemies, Pirates, Robbers, Restraints of Princes, Rulers and People, Loss or Damage from Heat or Fire on board, in hulk or craft or on shore, Explosion, Steam, Accidents to or latent defects in Hull, Tackle, Boilers and Machinery, or their appurtenances, Jettison, Barratry, any act, neglect or default whatsoever, of Pilots, Masters or Crew in the management or navigation of the Ship, Quarantine, Collision, Stranding, and all and every other Dangers and Accidents of the Seas, Rivers or Steam Navigation, or whatever nature or kind always excepted. In the event of the Steamer putting back or into Port, or otherwise being prevented, from any cause, from proceeding in the ordinary course of her voyage, the Master or Agent to have liberty to tranship the Goods by any other Steamer or Steamers. Average (if any) according to York Antwerp rules.

Weight, Measure, Quality, Contents, and Value unknown, and not accountable for inaccurate description of Goods shipped, for Leakage, Breakage or insufficiency in packing, or in strength of package, obliterations, or inaccuracies of Marks, Numbers, designation or Address on the Packages, nor for damage or loss from vermin, sweating, decay, heat of holds, contact with, or smell or evaporation from other goods; nor for any consequences arising from any of the foregoing exceptions. If goods, other than usual Island produce, or of a dangerous and damaging nature, be shipped without being previously declared and arranged for, all loss, damage, or responsibility whatever connected, with said goods will fall upon the Merchants or Owners of said goods.

unto J. W. Wuppermann, Esq., or to his or their Assigns Freight and charges to be paid by Consignee in American Gold, or equivalent with average accustomed, at the rate of 20c. per case in full.

The Collector of the Port is hereby authorized to grant a general order for the discharge immediately after the entry of the Ship. The goods to be received by the Consignee as fast as the steamer can deliver, and any extra charges incurred after being discharged, necessary for the Steamer's quick dispatch, to be paid by the Owner or Consignee of the goods. Sugar drainage for account of ship. 433

The Master or agent shall have a lien on the goods for Freight unpaid, payments made or liabilities incurred in respect of any charges stipulated herein to be borne by the Owner of the said goods.

In witness whereof, the Master or Agent of the said Vessel hath affirmed to 4 Bills of Lading, all of this tenor and date, one of which being accomplished, the others to stand void. 434

Dated at Trinidad this 31st day of August, 1893.

p.p. Turnbull, Stewart & Co.
George Christall.

It is agreed that the other bills of lading put in evidence by other libellants and by claimant be omitted, the form thereof and terms and conditions thereof being the same as the above and the cargo being that mentioned in the several libels, with liberty to refer to the above for the terms and conditions of the others with the same force and effect as though all were fully set forth in this and the other cases. 435

Convers & Kirlin,
Procs. for Clt.
Geo. A. Black,
Proc. for Libts.

436 **Claimants' Exhibit A.**

W. W. Hurlbut & Co.,
136 Pearl Street,
New York.

Cable Address,
"Dogbastian."
Watkins Code,
Scotts Code.

Telephone "John 142."

TIME CHARTER.

NEW YORK, Sept. 14, 1892.

IT IS THIS DAY MUTUALLY AGREED, between W. W. Hurlbut & Co., Agents for James Knott, Esq.,
437 owner of the two good screw steamships to be built and named by charterers of the port of of tons gross register, and tons net register horses power, provided with steam winches, spare propeller, spare crank, and spare tail shaft and Board of Trade certificates for hull and machinery; classed 100 A1, and U. S. Certificate for 30 first class cabin passengers, and George Christall, Esq., of the Trinidad Direct Line S. S. Co., charterer, as follows, viz.:

1. The said owner agrees and the said charterer agree to hire the said steamships for the term of forty-eight calendar months (or, in charterers option,
438 until the completion of any voyage commenced at any time before but not completed until after the expiry of the said 48 months) commencing on after entry at C. H. and ready to receive cargo, they then being placed at the disposal of the charterers, in their loading berth, in the port of New York, at such wharf or place (where she may always safely lie afloat) as the charterers may direct, they being then tight, staunch, strong, bottoms newly painted, and every way fitted for the service; to be employed in any lawful trades between the United Kingdom

and/or of the Continent of Europe and/or Africa and/or Asia and/or Central America and/or North and/or South America and/or West Indies, (not north of River St. Lawrence) in any order, or in any other trade, as the charterers or their agents shall direct. Baltic ports and River St. Lawrence excluded from Oct. first to May first. 439

2. The charterers shall provide and pay loading and discharging the cargo, and for all the provisions, consular fees and wages of the captains, officers, engineers, firemen, & crew who, excepting the engineers, shall be appointed by them. The owners shall appoint 3 engineers to each vessel, their pay not to exceed that paid by the owner in similar vessels. The owners shall maintain the vessels in a thoroughly efficient state in hull and machinery for the service, including winches with chain and/or wire gear and donkey boiler. Deck and engine room stores to be found by owner. 440

3. The charterers shall also provide and pay for all the coals and fuel, port charges, pilotages, agencies, commissions, and all other charges whatsoever, excepting for painting and repairs to hull and machinery, and anything appertaining to keeping the ships in proper working order.

4. The charterers shall pay for the use and hire of each of the said vessels at the rate of (£700 Br. Sterling) Seven hundred Pounds British Sterling, at the current rate of exchange of bankers, 60 day bills on London per calendar month, and at and after the same rate for any part of a month, the hire to continue from the time specified for terminating the charters until deliveries to the owner (unless lost), at port of in the United States—North of Hatteras. Payment whereof shall be made in cash at New York monthly in advance, and in default of such payment or payments as herein are 441

442 specified the owners shall have the right of withdrawing the said steamers from the service of the charterers, without prejudice to any claim the owners may otherwise have on the charterers in pursuance of this charter.

5. That the cargoes shall be laden and/or discharged in any dock, or at any wharf or place that charterers may direct where she can always safely lie afloat.

6. That the whole reach burthen and passenger accommodation of the ships (not being more than she can reasonably stow and carry) shall be at the charterers disposal, reserving only proper and suf-
443 ficient space for ships officers, crew, tackle, apparel, furniture, provisions and stores. Cargo and/or coals and/or cattle may be taken on deck at the charterers risk so far as the same do not endanger the safety of the vessel.

7. The expense of loading and discharging shall be borne by the charterers, the stowage shall be under the control of the master, and the charterers shall be responsible for the same. Ballast and dunnage as required shall be found by charterers.

8. A full outfit of plated ware, crockery, linen and
444 all other fittings shall be supplied by owners and inventory thereof taken at the commencement of this charter—all fair wear and tear of same shall be for owners account and the outfit shall be maintained by the owners in good condition throughout the charter. Charterers being responsible for all articles lost or broken except for the ordinary breakage of crockery incidental to all vessels.

9. The vessel shall be put into dry dock and painted, if required by charterers at owners ex-

pense every six months. Time so occupied shall not be paid for by charterers. 445

10. The master shall be under the orders and directions of the charterers as regards employment, agency, or other arrangements; and the charterers hereby agree to indemnify the owners from all consequences or liabilities that may arise from the master signing bills of lading, by their orders, or those of their agents, or in otherwise complying with same. The master although appointed by charterers to be satisfactory to the owners.

11. If the charterers shall have reason to be dissatisfied with the conduct of the engineers, or if the owners should have reason to be dissatisfied with the conduct of the officers or crew, a satisfactory change in the appointments shall be made when the steamer is in New York or Europe. 446

12. That the charterers shall have the option of continuing the charter for a further period of one year on giving one month's notice thereof to owners previous to expiration of first named term, and to have the liberty of sub letting the steamer, if required by them.

13. That should vessel be lost, any hire paid in advance and not earned (reckoning from the date of her loss) shall be returned to the charterers, with interest from date of loss. 447

14. * * * * * *

15. That should any dispute arise between the owners and the charterers, the matters in dispute shall be referred to three persons at New York, one to be appointed by each of the parties thereto, and the third by the two so chosen, their decision, or

any two of them shall be final, and for the purpose of enforcing any award, this agreement shall be made a rule of court.

16. That the owners shall have a lien upon all cargoes, and all sub-freight, for freight or charter money due under this charter, and the charterers to have a lien on the ship for all moneys paid in advance and not earned.

17. In the event of loss of time from collision, stranding, want of repairs, breakdown of machinery, or any cause appertaining to the duties of the owner preventing the working of the vessel for more than twenty-four working hours, the payment of hire shall cease from the hour when detention begins until she or they be again in an efficient state to resume her service; and if upon the voyage her speed be reduced by the breakdown of her machinery, the loss of the propeller, or any other mishap, the time so lost and the cost of the extra coal, (if any), consumed in consequence thereof, shall be deducted from the hire. Further, if in consequence of such deficiency, collision, want of repairs, breakdown or other causes, the vessel should put into any port or ports other than those to which she is bound, port charges, pilotages, and other expenses at those ports, and all those consequent upon the putting in, shall be borne by the owners; but should the vessel be driven into port or to anchorage by stress of weather, such detention or loss of time shall fall on the charterers.

18. It is understood that the bills of lading used by the charterers shall contain the usual "negligence" clause.

19. The charterers shall pay the owners the current local price for any coals left in the steamer's

bunkers, and the owners in like manner shall pay 451
the charterers the current local price for any coals remaining on board on completion of the present charter.

20. United States passenger certificate for thirty passengers (first class) to be furnished by charterers. And passenger accommodation for thirty first class cabin passengers fitted in first class manner, with all napery, crockery, etc., usual for first class West Indian service. Owners to furnish the usual life-boats required for vessels this size and class, also to put steam pipes in holds of 2-inch diameter so hold could be flooded with steam in case of fire.

452

21. Charterers have the option of cancelling this charter if steamers are not ready to receive cargo by April 30, 1893.

The clause on back of this charter to form rest of contract.

22. That the owners shall pay for the insurance on the vessels.

23. The benefit of all derelicts and salvages, as well as the loss of time and other expenses attendant thereon, to be for account of owners and charterers equally. Penalty for non-performance of this contract, estimated damages.

453

24. An address commission of 2½ per cent on the amount of this charter is payable by owners to charterers agents, Messrs. Carey, Yale & Lambert, of New York.

25. Commission of 5 per cent on the estimated amount of freight is due and payable by owners, on assignment hereof to W. W. Hurlbut & Co., New

York, ship lost or not lost, as also on any extension or renewal of this charter or purchase of vessel.
By cable authority of James Knott, Esq.
Dated Newcastle-on-Tyne,
Sept. 14, 1893.

Signed by W. W. HURLBUT & Co. (sgd.).,
Agents.

In the presence of
A. C. COLVIL (sgd.).
Signed by GEORGE CHRISTALL (sgd.).
In the presence of
WM. S. LAMBERT (sgd.).

We certify the above to be a true copy of the original Charter Party in our possession.
W. W. HURLBUT & Co.,
Brokers.

26. It is understood and agreed that the two steamers are to be contracted for, so that delivery can be made at New York between March 1st and April 30, 1893. Charterers agree to accept the usual builders guarantee.

27. Owner guarantees steamers to steam not less than a steady 10 knots when loaded in ordinary weather on a consumption of 15 tons Welsh coal per 24 hours, provided good quality American or English coals are supplied. To be fitted with triple expansion engines of sufficient size to drive steamers required speed.

28. Two extra large boilers to be furnished each steamer to enable the steamers to maintain their speed in tropical waters. Donkey engines and boilers to be sufficiently large to drive all the winches at one and the same time, as well as to provide steam for heating cabins.

29. Both steamships to be guaranteed to carry not less than 2,500 tons dead weight all told and draft not to exceed 20 feet mean draft loaded. 457

30. Lower holds to be divided into four compartments, and to have four hatches as large as possible, with hatch covers to between decks. Each hatch to be provided with first class double winches capable of lifting five tons, with double derricks to each, to enable quick handling of cargo. Side ports to each ship.

31. To be provided with stockless anchors, first class steam windlass and stearing gear. Taffrail on upper deck to meet with Lloyds rules, and to unship abreast each hatch. 458

32. Electric lights to be provided for loading and discharging cargo as well as for cabins. Full set of plans and half models to be furnished charterers by owners.

33. Saloon, state-rooms, smoking and ladies room, chart-house, etc., to suit the trade, and in accordance with plans, cables, and letters exchanged. Owner to remember vessel is intended for tropical trades and state-rooms, etc. must be large, light and well ventilated, and also steam heated. Full outfit of napery, linen, silver, etc. to be furnished and charterer to be responsible for same if lost or broken, and return same on completion of charter in good order. Ordinary wear and tear excepted. Plans of ship and cabin to be subject to charterers approval. 459

34. No goods, contraband of war to be shipped, and the steamer not to be required to enter any port that is in a state of blockade, or where hostilities are in progress or imminent. In the event of a country to which steamer trades being at war with

460 any other country, charterers agree to insure the steamer against all war risks for the value under the present policy.

35. No injurious cargoes to be shipped, or any voyage undertaken, or goods or cargoes loaded that would involve risk, seizure, capture, or penalty, by British or Foreign rulers, or government. It is understood W. H. Bennett proceeds to Newcastle to approve final plans, in charterers interest, only approving plans in accordance with Mr. Christall's instructions, minor details, such as ice-house, store-rooms, specie-room, mail-locker, etc., to be arranged to mutual satisfaction of both charterer and owner.

461

(sgd.) W. W. HURLBUT & Co.
Agents.

(sgd.) GEORGE CHRISTALL.

Witnessed:

(sgd.) A. C. COLVIL.

(sgd.) WM. S. LAMBERT.

462

Exhibit A. 463

EXTRACTS FROM SPECIFICATION OF S. S. "CARIB PRINCE."

Produced by the witness M. C. James.

GENERAL DESCRIPTION.—The vessel to be built generally as per accompanying drawings, but all detail and working drawings are to be supplied by builders, and approved by owner. To have a clipper stem, elliptic stern, short poop, long bridge. Full topgallant forecastle. To be rigged as a two-masted schooner, with no yards on foremast. Water ballast in a cellular double bottom all fore and aft, and 464
in fore and aft peaks. To have instead of hold beams the main frames doubled, or large zed frames leaving holes clear for carrying large machinery or other cargo, but strong beams in engine-room, and panting beams and stringers in both peaks. Engine and boiler casing to stand feet and inches high. The vessel to be built of steel, except tank top, floors, intercostals, and any other parts liable to speedy corrosion, at owners option, other parts usually of iron in vessels built of steel to be iron. All steel used in the construction to be of Siemens-Martin process and tested by Lloyd's surveyors as required. To have a plate keel, and bilge keels of 10 x $\frac{1}{2}^0$ bulb, and 4 x $3\frac{1}{2}$ x $\frac{1}{2}^0$ angles on each side for about 95 feet 465
amidships. * * *

All workmanship and materials to be of the best description and to the satisfaction of owner. * * *

RIVETING.—To be riveted in accordance with Lloyd's rules, and carefully tested. Holes to be carefully spaced and accurately punched and very carefully countersunk. Care to be taken that the holes are completely filled by the rivets, and that the points, when closed up, are not below, but slightly above the surface of the plating. No rivets to come

466 through butts of plating. Rivets to be of iron of good quality, to owners approval. Rivets in keel, stem and stern frame to be raised at least ¼-inch above the surface of the plating. * * *

WATER TESTING.—All the water ballast compartments, including peaks, to be tested, being pressed with a head of water one foot above the height of the load water line, and made thoroughly water tight in best and most workmanlike manner. All decks to be flooded for testing. Sufficient notice to be given to the owner when any testing is to take place.

467

BULKHEADS.—To have steel water-tight bulkheads. Bulkhead plates in bunkers to be of iron. All to have horizontal and vertical stiffening angles of ample strength and the collision bulkhead to be additionally strengthened to owner's satisfaction, and boiler-room bulkhead to have water-tight doors at least 36 by 18 inches, fitted on each side for access to reserve bunker. Engine-room bulkhead to have a large water-tight door for access to shaft tunnel, with lifting screw wood cross bunker bulkhead in main hold and divisional bulkhead in after hold, to be fitted in positions as required, both to be well stayed with angle irons and made quite dust-tight and to have two dust-tight sliding doors. The
468 donkey-boiler recess and boiler-room bulkhead out to line of side bunkers to be sheathed with pine 2½ inches thick, leaving an air space of 9 inches between, and the air space to be efficiently ventilated to owner's satisfaction.

U. S. CIRCUIT COURT OF APPEALS. 469

WILLIAM GILLESPIE *et al.*

vs.

S.S. "CARIB PRINCE," and three other cases.

It is stipulated that the annexed three pages of the chief officer's log and the annexed three pages of the chief engineer's log of the steamship *Carib Prince* may be returned on the appeal herein, and that either party may on the argument of this case read any other pages from said logs. 470

Dated January 26, 1895.

CONVERS & KIRLIN,
Procs. for Clt.
GEO. A. BLACK,
Proc. for Libts.

471

PREVIOUS FOLDOUTS TOO

472 UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

JOSEPHINE W. WUPPERMANN

vs.

The Steamship "CARIB PRINCE."

CLIFFORD L. MIDDLETON *et al.*

473 vs.

THE SAME.

MANUEL CADENAS and another

vs.

THE SAME.

474 WILLIAM GILLESPIE *et al.*

vs.

THE SAME.

Opinion.

OCTOBER 4, 1894.

BENEDICT, *J.*—These actions are brought to recover of the steamship *Carib Prince* for damage done

to merchandise forming the cargo of that vessel on a voyage from Grenada to New York. 475

The vessel was constructed with a water tank of iron in her peak, one side of which was formed by a bulkhead. This tank, when she sailed from Grenada, was empty, but, during the voyage from Grenada to New York, it was filled with water one afternoon, in order to trim the vessel, and the next morning, much of the water having gone from the tank, an investigation showed that the head had come off from one of the rivets riveting the bulkhead side of the tank, leaving a hole through which water had poured upon the libellants' merchandise stowed near the bulkhead. The evidence in respect to the rivet has led me to the conclusion that the cause of 476 the accident was a defect in the rivet, arising from the fact that the quality of the iron had been injured by too much hammering at the time it was annealing, so that it became brittle and weak. This defect could not be seen. The broken rivet was found on one of the bags of cargo, and showed that it had broken off in the countersunk part of the rivet, below the head, so that while the rivet remained in place no external examination would have discovered the defect.

This defective rivet was in my opinion the cause of the accident. The condition of the rivet rendered it unfit to sustain the reasonable pressure caused by filling the tank with water while at sea, 477 and the vessel consequently was unseaworthy in that respect. The evidence shows that the vessel was a new vessel, built by builders of the highest class, and all reasonable effort was made to secure a proper riveting of the tank. After construction the tank was tested by a hammer and by water pressure, and it was found to be tight and strong enough to sustain the weight of water while not in motion. When the tank was filled with water while the ship was in motion, the rivet in question proved insufficient, owing, as already stated, to the fact that the iron had lost its strength in the process of being ham-

478 mered while it was annealing, and it gave way, causing the damage sued for.

If diligence on the part of the shipowner to provide a seaworthy ship, and a justifiable belief on his part that his ship was seaworthy, could avail to relieve him from his warranty of seaworthiness, he could be relieved upon the proofs in this case; but the rule has been declared that if the unseaworthy condition arose from a defective construction, although latent and unknown to the owner, he is not excused. The shipowner must show affirmatively that his ship was seaworthy at the beginning of the voyage.

The question then arises whether this obligation
479 on the part of a shipowner has been qualified by the clause in the bill of lading which exempts the shipowner from damage caused by a latent defect —which is this case. This was an English ship, the contract was signed in a port governed by English law, and it has been held in this circuit that such a case is to be governed by the law of the place where the contract was made. It was a British vessel, governed by the laws of England.

Liverpool and Great West. Steamship Co. *vs.* Phenix Ins. Co., 129 U. S., 397; *The Majestic*, 60 Fed. Rep., 624; App., 282-295.

480 The law of England as declared in the case of The Cargo *ex Lartes*, 12 Prob. Div., 187, is to the effect that by the laws of England such an exception as that contained in the bill of lading sued on, if it does not abrogate, at all events limits the warranty which the law would otherwise imply, that the ship was seaworthy at the beginning of the voyage, and exempts the ship if due diligence is exercised by the shipowner. Applying that law to this case, it follows from the fact that the weak condition of the iron rivet could not be discovered by the exercise of due diligence, that the ship cannot be held liable for the injury to the libellants' cargo, because the danger

arose from a latent defect in the rivet which gave 481
way, within the exception in the bill of lading under which the merchandise was carried.

Upon this ground the libels are dismissed, and with costs.

At a Stated Term of the United States District Court for the Eastern District of New York, held in the Post Office Building, in the City of Brooklyn, on the 11th day of October, 1894.

Present—Hon. CHARLES L. BENEDICT,
District Judge.

482

JOSEPHINE W. WUPPERMANN,
Libellant,

AGAINST

The Steamship "CARIB PRINCE," Ernest C. Legge,
Claimant.

The above entitled cause having come on to be heard, on the pleadings and proofs of the respective parties, and after hearing the advocates of the respective parties, and due deliberation having been 483
had, now, on motion of Convers & Kirlin, proctors for the claimant, it is

Ordered, adjudged and decreed, that the libel in this cause be and the same hereby is dismissed, with costs; and the costs of the claimant having been taxed at the sum of $93.21, it is further

Ordered, adjudged and decreed, that the claimant Ernest C. Legge recover in this action against the libellant above named, Josephine W. Wuppermann, the sum of $93.21; and it is further

Ordered, adjudged and decreed, that unless an appeal be taken from this decree within the time

allowed by law and the rules and practice of this Court, the Clerk of this Court pay to the claimants or their proctors the said sum of ninety-three and $\frac{21}{100}$ dollars out of the amount deposited in the registry of this Court by the libellant as security for costs, and the remainder of said sum be paid to the libellant or her proctors, less the fees for keeping and paying out the whole of said sum. And after the payment of said sum, all stipulations given herein by the claimant to be cancelled of record.

CHAS. L. BENEDICT.

(Endorsed)—Final Decree.—Filed and entered the 11th day of October, 1894.

DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF NEW YORK.

JOSEPHINE W. WUPPERMANN

vs.

S. S. "CARIB PRINCE," her engines, &c.

Please take notice that the libellant herein appeals to the United States Circuit Court of Appeals for the Second Circuit from the final decree entered herein on the 11th day of October, 1894.

Dated October 19, 1894.

GEO. A. BLACK,
Proctor for Libellant.

To Messrs. CONVERS & KIRLIN,
Claimant's Proctors.

B. LINCOLN BENEDICT, Esq.,
Clerk.

(Endorsed)—Notice of Appeal.—Filed October 20, 1894.

U. S. DISTRICT COURT, 487

EASTERN DISTRICT OF NEW YORK.

JOSEPHINE W. WUPPERMANN
vs.
S. S. "CARIB PRINCE."

ASSIGNMENT OF ERRORS BY LIBELLANT-APPELLANT.

488

FIRST.—The District Court erred in holding that the steamship *Carib Prince* was not liable to the libellant for the damage to her cargo alleged in the libel.

SECOND.—The District Court erred in holding that the exception of latent defects in the bill of lading exempted the steamship from liability to the libellant.

THIRD.—The District Court erred in not holding that the steamship *Carib Prince* was unseaworthy at the time she sailed with the cargo on board, of libellant, and that such unseaworthiness caused the injury to libellant's cargo. 489

FOURTH.—The District Court erred in not holding that the said steamship was unseaworthy in respect to the construction of her ballast tank, which caused the injury to libellant's cargo.

FIFTH.—The District Court erred in not holding that the said steamship was unseaworthy in respect to the construction of her floor over her bilges, which caused the injury to the libellant's cargo.

490 SIXTH.—That the said District Court erred in dismissing the libel, and should have awarded a decree in favor of libellant for the damages sustained to her cargo.

GEO. A. BLACK,
Proctor for Libellant,
44 Pine Street,
New York City.

(Endorsed)—Assignment of Errors by Libellant-Appellant.—Filed October 22, 1894.

UNITED STATES OF AMERICA, }
Eastern District of New York, } ss.:

491 I, B. LINCOLN BENEDICT, Clerk of the United States District Court for the Eastern District of New York, do hereby certify that the foregoing is a true transcript of the pleadings, proofs and papers on appeal on file in my office in the suit of Josephine W. Wuppermann against The Steamship *Carib Prince*, her engines, &c., made up to be transmitted to the United States Circuit Court of Appeals for the Second Circuit, pursuant to rule.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, at the City of Brooklyn, this 31st day of January, 1895.

B. LINCOLN BENEDICT,
Clerk.

[SEAL.]

492

UNITED STATES DISTRICT COURT, 493

EASTERN DISTRICT OF NEW YORK.

MANUEL CADENAS and EDWARD P. COE,
Libellants,

AGAINST

The Steamship "CARIB PRINCE," her engines, &c. JAMES KNOTT,
Claimant.

494

STATEMENT.

1893, Oct. 23. Libel filed. No process issued.
" 26. Claim filed by James Knott, owner, with stipulation for value.
Nov. 27. Answer filed.
" " Exceptions to answer filed.
1894, Jany. 8. Amended answer filed.
" 11. Exceptions to amended answer filed.
Feby. 9. Order on exceptions entered.
" 19. Amendments to answer filed.
June 14 and 18. Cause tried before Hon. Charles L. Benedict, Judge. 495
Oct. 4. Decision rendered.
" 11. Final decree entered.
" 20. Notice of appeal and assignment of errors filed.

496 To the Honorable CHARLES L. BENEDICT, Judge of the District Court of the United States for the Eastern District of New York:

The libel and complaint of Manuel Cadenas and Edward P. Coe against the steamship *Carib Prince*, her engines, &c., in a cause of contract, civil and maritime, alleges and articulately propounds as follows:

I.—That your libellants, at all the times hereinafter mentioned, were copartners in business, under the firm name of Cadenas & Coe, in the City of New York, and carry on business therein.

II.—That on or about the 1st day of September,
497 1893, there was shipped upon the steamship *Carib Prince*, then lying at Trinidad, and bound for the port of New York, and engaged in carrying on the business of a common carrier, by J. Anduze & Co., 43 bags of cocoa, the property of your libellants, to be carried to the port of New York, and there delivered unto your libellants in the like good order as received for a freight agreed to be paid therefor, and the agents of said steamship signed bills of lading therefor, dated the 1st day of September, 1893, whereby they acknowledged the receipt of the said 43 bags of cocoa in good order and well conditioned, and undertook to deliver the same at the port of New York in the like good order.

498 III.—That the said first day of September, 1893, there was also shipped upon the steamship *Carib Prince*, then lying at Trinidad as aforesaid, and bound for the port of New York, by the firm of Andre Giusseppi & Co , 25 bags of cocoa, the property of your libellants, to be carried to the port of New York, and there delivered unto your libellants in the like good order as received for a freight agreed to be paid therefor, and the agents of said steamship signed the bills of lading therefor, dated the 1st of September, 1893, whereby they acknowledged the receipt of the said 25 bags of

cocoa in good order and well conditioned, and under- 499
took to deliver the same at the port of New York in the like good order.

IV.—That thereafter and on or about the 11th day of September, 1893, the said steamship *Carib Prince* arrived at the port of New York and there delivered to the libellants the said 68 bags of cocoa, but not in the like good order as received, 52 of said bags, to wit, 19 bearing the mark "A G & C / C C" and 23 bearing the mark "Loisa" and 10 bearing the mark "Magdelena" being damaged, and that your libellants have suffered damage thereto in the sum of $861.92, payment of which has been demanded of the agents of said steamship and refused. 500

V.—That the said steamship *Carib Prince* is now in the port of New York and within the jurisdiction of this Honorable Court.

VI.—That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore, libellants pray that process in due form of law issue against said steamship, her tackle, &c., and that all persons interested therein may be cited to appear and answer all and singular the matters afo[illegible]id, and that the said steamship may be condemned and sold to pay the said damages, to your libellants, with interest and costs, and that otherwise right and justice may be done. 501

MANUEL CADENAS.

Sworn to before me this 21st day of October, 1893.

LAWRENCE KNEELAND,
[L. S.] Notary Public,
Kings Co.
Cert. filed in N. Y. Co.

GEO. A. BLACK,
Proctor for Libellants,
44 Pine street,
New York City.

(Endorsed)—Libel.—Filed October 23, 1893.

502 To the Honorable CHARLES L. BENEDICT, United States District Judge, for the Eastern District of New York.

The amended answer of James Knott, owner and claimant of the steamship *Carib Prince*, to the libel of Manuel Cadenas and Edward P. Coe, against said steamship, her engines, &c., in a cause of contract, civil and maritime, alleges and propounds as follows:

FIRST.—He admits the matters alleged in the first article of the libel.

503 SECOND.—He admits that on or about the 1st day of September, 1893, there were shipped upon the steamship *Carib Prince*, then lying at Trinidad, and bound for the port of New York, by J. Anduze & Co., 43 bags of cocoa, the property of the libellants, to be carried to the port of New York, and there delivered unto the libellants in the like good order as received, subject to the conditions and exceptions contained in the contract of carriage. But he denies that the steamship at the time in question was engaged in carrying on the business of a common carrier, and explains that the vessel was let out to hire to George Christall, Esq., of the Trinidad Direct Line Steamship Company, as hereinafter set forth. He denies that the agents of said ship signed
504 bills of lading for the merchandise in question, dated the 1st day of September, 1893, but admits that the agents of George Christall, Esq , of the Trinidad Direct Line Steamship Company, signed bills of lading therefor, whereby they acknowledged receipt of the said forty-three bags of cocoa in apparent good order and condition, and undertook to deliver the same at the port of New York in the like apparent good order, subject to the terms, conditions and exceptions contained in the bill of lading, a copy of which is hereto annexed, marked Schedule "A," and made a part thereof.

THIRD.—He admits that on or about the 1st day 505
of September, 1893, there were shipped upon the steamship *Carib Prince*, then lying at Trinidad, and bound for the port of New York, by Andre Giusseppi & Co., twenty-five bags of cocoa, the property of the libellants, to be carried to the port of New York, and there delivered unto the libellants in the like good order as received, subject to the conditions and exceptions contained in the contract of carriage. But he denies that the steamship at the time in question was engaged in carrying on the business of a common carrier, and explains that the vessel was let out to hire to George Christall, Esq., of the Trinidad Direct Line Steamship Company, as hereinafter set forth. He denies that the agents of said 506
steamship signed bills of lading for the merchandise in question, dated the 1st day of September, 1893, but admits that the agents of George Christall, Esq., of the Trinidad Direct Line Steamship Company, signed bills of lading therefor, whereby they acknowledged receipt of the said twenty-five bags of cocoa in apparent good order and condition, and undertook to deliver the same at the port of New York in the like apparent good order, subject to the terms, conditions and exceptions contained in the bills of lading, which were the same as those contained in Schedule "A" hereto annexed. (Being in same form as Wuppermann Bill of Lading, it is omitted herefrom by consent, with liberty to refer to that 507
bill for form and terms with like effect as though here printed.)

FOURTH.—He admits that afterwards and on or about the 11th day of September, 1893, the steamship *Carib Prince* arrived at the port of New York, and admits that the agents of the said George Christall, Esq., of the Trinidad Direct Line Steamship Company, thereupon delivered from the steamship to the libellants all of the said bags of cocoa, some of which had been, during the voyage, damaged by sea water which entered the hold, owing to latent

508 defects in the bulkhead between the No. 1 hold, in which the cargo was stowed, and the peak tank, just forward of it, or through some fault or error on the part of those in charge of said steamship in the management or navigation of the vessel during the voyage, in filling the said peak tank, for which, under the terms of the bills of lading, it was agreed the ship should not be responsible, and he denies any knowledge or information sufficient to form a belief in relation to the number of packages damaged, their marks, or the extent of the injury.

He furthermore denies that the amount of said damage has been demanded of the agents of said steamship and refused.

509

FIFTH.—He admits the matters contained in the fifth article of the libel.

SIXTH.—Except as hereinbefore and hereinafter admitted, he denies the matters contained in the sixth article of the libel.

SEVENTH.—For a further and separate defense, claimant alleges that at all the times in question, the steamship *Carib Prince* was let out to hire under a charter of demise unto George Christall, Esq., of the Trinidad Direct Line Steamship Company, who manned and officered the vessel, and
510 whose agents made all freighting contracts, and signed and delivered all bills of lading. A copy of said charter-party is hereto annexed (being the same offered in evidence on trial and printed in the Wuppermann Apostles and omitted herefrom by consent, with liberty to refer to charter in evidence with like effect as though here printed) marked Schedule "B" and made a part hereof. The merchandise in question was carried under bills of lading signed by the agents of the charterer at Trinidad. Claimant thereupon alleges that said bills of lading are personal contracts between the shippers and charterer

of the vessel, and do not bind the steamship *Carib* 511
Prince in rem as a common carrier.

EIGHTH.—In the alternative, he alleges that said bills of lading provided that the merchandise in question was "to be delivered from the ship's deck, where the ship's responsibility shall cease, in the like good order and well conditioned, at the aforesaid port of New York; the act of God * * * loss or damage from heat or fire on board, in hulk or craft or on shore, explosion, steam, accidents to or latent defects in hull, tackle, boilers and machinery, or their appurtenances, jettison, barratry, any act, neglect or default whatsoever, of pilots, masters or crew in the management or navigation of 512
the ship * * * and all and every other dangers and accidents of the seas, rivers, or steam navigation, of whatever nature or kind always excepted. * * * Weight, measure, quality, contents and value unknown, and not accountable for inaccurate description of goods shipped, for leakage, breakage, or insufficiency in packing, or in strength of package, obliteration of, or inaccuracies of marks, numbers, designation, or address on the packages, nor for damage or loss from vermin, sweating, decay, heat of holds, contact with, or smell or evaporation from other goods; nor for any consequences arising from any of the foregoing exceptions."

The owner and charterer of said vessel used all 513
due diligence to have her properly equipped, manned, provisioned and outfitted, and to make her seaworthy and capable of performing her intended voyage, and used all due diligence in and about the transportation of the merchandise in question, and allege that the damage in question was due to latent defects in the bulkhead between the No. 1 hold and the peak tank, just forward of it, or to some error or fault in the management or navigation of the vessel in filling the said peak tank on the voyage, as will more fully appear on the trial of this cause.

514 The claimant further alleges that each and all of the above mentioned exemptions in the bill of lading are valid by the law of England, which prevails at the port of shipment where the contracts in question were made.

NINTH.—All and singular the premises in this amended answer contained are true.

Wherefore, claimant prays that the libel may be dismissed, with costs, and that the Court will make such decree as the justice of the cause may require.

CONVERS & KIRLIN,
Proctors for Claimant.

515

Southern District of New York, ss.:

J. PARKER KIRLIN, being duly sworn, says: That he is one of the proctors for the claimant herein, and that the foregoing amended answer is true, according to his information and belief, derived from statements made by the officers of said steamship. He further says that the claimant is absent from the United States.

J. P. KIRLIN.

Sworn to before me this 6th day of January, 1894.

CHARLES A. BRODEK,
[L. S.] Notary Public,
516 New York County.

At a Stated Term of the District Court of 517
the United States for the Eastern District of New York, held at the Court Rooms thereof in the Post Office Building, in the City of Brooklyn, on the 9th day of February, 1894.

Present—Hon. CHARLES L. BENEDICT,
District Judge.

MANUEL CADENAS *et al.*

AGAINST 518

S. S. "CARIB PRINCE."

The libellants, having filed eight exceptions to the amended answer of the claimants herein, and such exceptions having been noticed for argument by the said claimants, after hearing George A. Black, of counsel for the libellants, and J. Parker Kirlin, of counsel for the claimants, it is

Ordered, claimants not opposing, that the first and second of said exceptions be allowed, and that there be stricken from the second and third articles of the said amended answer the words therein, 519
"and he denies that the steamship at the time in question was engaged in carrying on the business of a common carrier."

(2.) That the third exception of the libellant to the fourth article of the amended answer is sustained as to the indefiniteness of the specification of what the latent defect was, and it is ordered, the claimants assenting thereto, that the said eighth article be amended by inserting in the said eighth

520 article of their amended answer the words "in certain rivets, angle irons, braces and straps" after the words "latent defects," and before the words "in the bulkhead" in said eighth article, and that in other respects the said sixth exception is overruled.

(3.) That the fourth exception of the libellants to the fourth article of the amended answer is overruled.

(4.) That the fifth exception to the seventh article of the amended answer as insufficient to constitute a defense is sustained.

521 (5.) That the sixth exception to the eighth article of the amended answer is sustained as to the indefiniteness of the specifications of what the latent defect was, and it is ordered, the claimants assenting thereto, that the said eighth article be amended by inserting in the said eighth article of their amended answer the words "in certain rivets, angle irons, braces and straps" after the words "latent defects" and before the words "in the bulkhead" in said eighth article, and that in other respects the said sixth exception is overruled.

(6.) That the seventh exception to the eighth article of the amended answer be overruled.

522 (7.) That the eighth exception to the eighth article of the amended answer be everruled.

(8.) It is further ordered that the claimants amend their answer in conformity thereto within 10 days after service of a copy of this order.

CHAS. L. BENEDICT.

(Endorsed)—Order.—Filed and entered Feby. 9, 1894.

UNITED STATES DISTRICT COURT. 523

EASTERN DISTRICT OF NEW YORK.

MANUEL CADENAS,
Libellant,

AGAINST

The Steamship "CARIB PRINCE,"
James Knott,
Claimant.

524

Pursuant to the order of this Court made and entered on the 9th day of February, 1894, the claimant amends his answer herein as follows:

1. Amend the second article of the amended answer by striking out the words "and he denies that the steamship at the time in question was engaged in carrying on the business of a common carrier."

2. Amend the third article of the amended answer by striking out the words "and he denies that the steamship at the time in question was engaged in carrying on the business of a common 525 carrier."

3. Amend the fourth article of the amended answer by inserting after the words "latent defects," and before the words "in the bulkhead," the words "in certain rivets, angle irons, braces and straps."

4. Strike out the seventh article of the amended answer.

526 5. Amend the eighth article of the amended answer by inserting after the words "latent defects," and before the words "in the bulkhead," the words "in certain rivets, angle irons, braces and straps."

CONVERS & KIRLIN,
Proctors for Claimant.

(Endorsed)—Amendments to Answer.—Filed February 19, 1894.

UNITED STATES CIRCUIT COURT,

527 EASTERN DISTRICT OF NEW YORK.

MANUEL CADENAS *et al.*

vs.

S.S. "CARIB PRINCE."

The testimony and exhibits adduced upon the trial of this Court and the opinion of the District Judge having been included in the record certified
528 by the Clerk in the suit of Josephine W. Wuppermann against the steamship *Carib Prince*, we hereby stipulate that the same may be omitted upon the record certified in this cause.

November 7, 1894.

CONVERS & KIRLIN,
Proctors for Liblt.

GEORGE A. BLACK,
Liblts.' Proctor.

At a Stated Term of the United States District Court for the Eastern District of New York, held in the Post Office Building, in the City of Brooklyn, on the 11th day of October, 1894. 529

Present—Hon. CHARLES L. BENEDICT,
District Judge.

MANUEL CADENAS *et al.*,
Libellants,

AGAINST

The Steamship "CARIB PRINCE,"
James Knott, Claimant. 530

The above entitled cause having come on to be heard, on the pleadings and proofs of the respective parties, and after hearing the advocates of the respective parties, and due deliberation having been had; now, on motion of Convers & Kirlin, proctors for the claimant, it is

Ordered, adjudged and decreed, that the libel in this cause be and the same hereby is dismissed, with costs; and the costs of the claimant having been taxed at the sum of $77.99, it is further 531

Ordered, adjudged and decreed, that the claimant, James Knott, recover in this action against the libellants above named, Manuel Cadenas and Edward P. Coe, the sum of $77.99; and it is further

Ordered, adjudged and decreed, that unless an appeal be taken from this decree within the time allowed by law and the rules and practice of this Court, the stipulators for costs on the part of the libellants cause the undertaking of their stipulation to be performed, or show cause, within four days thereafter, why execution should not issue against

532 them, their goods, chattels, credits and lands, to enforce a satisfaction of this decree; and it is further

Ordered, that unless the libellants appeal from this decree within ten days, all stipulations given herein by the claimant be cancelled of record.

CHAS. L. BENEDICT.

(Endorsed)—Final decree.—Filed and entered the 11th day of October, 1894.

DISTRICT COURT OF THE UNITED STATES

533 FOR THE EASTERN DISTRICT OF NEW YORK.

MANUEL CADENAS *et al.*

vs.

S. S. "CARIB PRINCE," her engines, &c.

Please take notice that the libellants herein appeal to the United States Circuit Court of Appeals for the Second Circuit from the final decree entered
534 herein on the 11th day of October, 1894.

Dated October 19, 1894.

GEO. A. BLACK,
Proctor for Libellants.

To Messrs. CONVERS & KIRLIN,
Claimant's Proctors.
B. LINCOLN BENEDICT, Esq.,
Clerk.

(Endorsed)—Notice of Appeal.—Filed October 20, 1894.

U. S. DISTRICT COURT, 535

EASTERN DISTRICT OF NEW YORK.

MANUEL CADENAS *et al.*

vs.

The S. S. "CARIB PRINBE."

ASSIGNMENT OF ERRORS BY LIBELLANTS-APPELLANTS. 536

FIRST.—The District Court erred in holding that the steamship *Carib Prince* was not liable to the libellants for the damage to their cargo alleged in the libel.

SECOND.—The District Court erred in holding that the exception of latent defects in the bill of lading exempted the steamship from liability to the libellants.

THIRD.—The District Court erred in not holding that the steamship *Carib Prince* was unseaworthy at the time she sailed with the cargo on board of libellants and that such unseaworthiness caused the injury to libellants' cargo. 537

FOURTH.—The District Court erred in not holding that the said steamship was unseaworthy in respect to the construction of her ballast tank, which caused the injury to libellants' cargo.

FIFTH.—The District Court erred in not holding that the said steamship was unseaworthy in respect to the construction of her floor over her bilges, which caused the injury to the libellants' cargo.

538 SIXTH.—That the said District Court erred in dismissing the libel and should have awarded a decree in favor of libellants for the damages sustained to their cargo.

GEO. A. BLACK,
Proctor for Libellants,
44 Pine Street,
New York City.

(Endorsed)—Assignment of Errors by Libellants-Appellants.—Filed October 20, 1894.

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539 UNITED STATES OF AMERICA, }
Eastern District of New York, } ss.:

I, B. LINCOLN BENEDICT, Clerk of the United States District Court for the Eastern District of New York, do hereby certify that the foregoing is a true transcript of the pleadings, proofs and papers on appeal, on file in my office, in the suit of Manuel Cadenas and another against the steamship *Carib Prince*, her engines, &c., James Knott, claimant, made up to be transmitted to the United States Circuit Court of Appeals for the Second Circuit, pursuant to rule.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, at the City of
540 Brooklyn, this 15th day of November, 1894.

B. LINCOLN BENEDICT,
[SEAL.] Clerk.

UNITED STATES DISTRICT COURT, 541

EASTERN DISTRICT OF NEW YORK.

CLIFFORD L. MIDDLETON and DONALD S. L. LEE

vs.

The Steamship "CARIB PRINCE," her engines, &c., JAMES KNOTT,

Claimant. 542

STATEMENT.

1893. Oct. 30. Libel filed. No process issued.
Nov. 2. Claim filed by James Knott, owner. Stipulation for value filed.
1894. March 13. Answer filed.
June 14 and 18. Cause tried before Honorable Charles L. Benedict, Judge.
Oct. 4. Decision rendered.
" 11. Final decree entered.
" 20. Notice of Appeal and assignment of errors filed. 543

544 To the Honorable CHARLES L. BENEDICT, Judge of the District Court of the United States for the Eastern District of New York:

The libel and complaint of Clifford L. Middleton and Donald S. L. Lee against the steamship *Carib Prince*, her engines, boilers, &c., in a cause of contract, civil and maritime, alleges and articulately propounds as follows:

FIRST.—That your libellants are copartners in business in the City of New York, under the firm name of Middleton & Co.

545 SECOND.—That on or about the first of September, 1893, there was shipped upon the steamship *Carib Prince*, then lying in the Gulf of Paria, and bound for the port of New York, and engaged in business as a common carrier, by Gordon Grant & Co., 136 bags of cocoa, to be carried to the port of New York, and there delivered to your libellants in the like good order as received, for a freight agreed to be paid therefor, and that thereupon the agents of said steamship signed bills of lading therefor, whereby they acknowledged the receipt of said 138 bags of cocoa in good order and well conditioned, and undertook to deliver the same to your libellants at the port of New York in the like good order.

546 THIRD.—That thereafter and on or about the 10th day of September, 1893, the said steamship *Carib Prince* arrived at the port of New York, and delivered to libellants the said 138 bags of cocoa, but not in the like good order as received, 115 bags thereof being delivered in a damaged condition, and that thereby the owner of said property sustained damage in the sum of $2,015.67.

FOURTH.—That the said steamship *Carib Prince* is now in the port of New York, and within the jurisdiction of this Honorable Court.

FIFTH.—That all and singular the premises are 547
true and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore, libellants pray that process in due form of law issue against said steamship, her engines, boilers, &c., and that all persons interested therein may be cited to appear and answer all and singular the matters aforesaid, and that the said steamship may be condemned and sold to pay the claim of your libellants, with interest and costs, and that otherwise right and justice may be done.

DONALD S. L. LEE.

Sworn to before me this 30th day of October, 1893.

LAWRENCE KNEELAND, 548
[L. S.] Notary Public,
Kings Co.
Cert. filed in N. Y. Co.

GEO. A. BLACK,
Proctor for Libellants,
44 Pine St.,
New York City.

(Endorsed)—Libel—Filed October 30, 1894.

To the Honorable CHARLES L. BENEDICT, United States District Judge for the Eastern District of 549
New York:

The answer of James Knott, owner and claimant of the steamship *Carib Prince*, to the libel and complaint of Clifford L. Middleton and Donald S. L. Lee, against the steamship *Carib Prince*, her engines, boilers, &c., in a cause of contract, civil and maritime, alleges as follows:

FIRST.—He has no knowledge of the matters alleged in the first article of the libel, and requires proof thereof, if material.

550 SECOND.—He has no knowledge of the matters alleged in the second article of the libel, and requires proof thereof, if and in so far as they are material.

THIRD.—He has no knowledge of the matters alleged in the third article of the libel, and requires proof thereof, if and in so far as they are material.

FOURTH.—He admits the matters contained in the fourth article of the libel.

551 FIFTH.—He denies that all and singular the premises are true, but admits the jurisdiction.

SIXTH.—For a further defense, the claimant avers that the bills of lading under which the merchandise in question is alleged to have been carried provided that the merchandise in question was "to be delivered from the ship's deck, where the ship's responsibility shall cease, in the like good manner and well conditioned, at the aforesaid port of New York; the act of God * * * loss or damage from heat or fire on board, in hulk or craft or on shore, explosion, steam, accidents to or latent defects in hull, tackle, boilers and machinery, or
552 their appurtenances, jettison, barratry, any act, neglect or default whatsoever of pilots, masters or crew in the management or navigation of the ship * * * and all and every other dangers and accidents of the seas, rivers, or steam navigation, of whatever nature or kind always excepted. * * * Weight, measure, quality, contents and value unknown, and not accountable for inaccurate description of cocoa shipped, for leakage, breakage or insufficiency in packing, or in strength of package, obliteration of, or inaccuracies of marks, numbers, designation, or address on the packages, nor for

damage or loss from vermin, sweating, decay, heat of holds, contact with, or smell or evaporation from other goods; nor from any consequences arising from any of the foregoing exceptions." 553

That the owner and charterer of said vessel used all due diligence to have her properly equipped, manned, provisioned and outfitted, and in every way seaworthy and capable of performing her intended voyage, and used all due diligence in and about the transportation of the merchandise in question, and alleges that if the cargo mentioned in the libel was damaged as alleged, the damage was due to latent defects in certain rivets, angle irons, braces and straps in the bulkhead between the No. 1 hold and the peak tank just forward of it, or to some error or fault in the management or navigation of the vessel in filling the said peak tank on the voyage, as will more fully appear on the trial of this cause. 554

The claimant further alleges that each and all of the above mentioned exemptions in the bill of lading are valid by the law of England, which prevails at the port where said merchandise is claimed to have been shipped, and where the said bills of lading are alleged to have been issued.

Wherefore, claimant prays that the libel may be dismissed, with costs, or that the claimant have such other relief as he may be entitled to receive.

CONVERS & KIRLIN, 555
Proctors for Claimant.

Southern District of New York, ss.:

E. B. CONVERS, being duly sworn, says:

That he is one of the proctors for the claimant herein, and that the foregoing answer is true, according to his information and belief, derived from statements made by the officers of the said steam-

556 ship. He further says that the claimant is absent from the United States.

E. B. CONVERS.

Sworn to before me this 13th day of March, 1894.

CHARLES A. BRODEK,
[L. S.] Notary Public,
New York County.

(Endorsed)—Answer.—Filed March 13, 1894.

UNITED STATES DISTRICT COURT,

557

EASTERN DISTRICT OF NEW YORK.

CLIFFORD L. MIDDLETON *et al.*

vs.

S. S. "CARIB PRINCE."

The testimony and exhibits adduced upon the trial of this cause and the opinion of the District
558 Judge having been included in the record certified by the Clerk in the suit of Josephine W. Wuppermann against the steamship *Carib Prince*, we hereby stipulate that the same may be omitted from the record certified in this cause.

November 7, 1894.

CONVERS & KIRLIN,
Proctors for Clt.
GEO. A. BLACK,
Liblts.' Proctor.

At a Stated Term of the United States District Court for the Eastern District of New York, held in the Post Office Building, in the City of Brooklyn, on the 11th day of October, 1894. 559

Present—Hon. CHARLES L. BENEDICT,
District Judge.

CLIFFORD L. MIDDLETON *et al.*,
Libellants,

AGAINST

The Steamship "CARIB PRINCE,"
James Knott,
Claimant. 560

The above entitled cause having come on to be heard on the pleadings and proofs of the respective parties, and after hearing the advocates of the respective parties, and due deliberation having been had, now, on motion of Convers & Kirlin, proctors for the claimant, it is

Ordered, adjudged and decreed, that the libel in this cause be, and the same hereby is, dismissed, with costs; and the costs of the claimant having been taxed at the sum of $77.89, it is further 561

Ordered, adjudged and decreed, that the claimant, James Knott, recover in this action against the libellants above named, Clifford L. Middleton and Donald S. L. Lee, the sum of $77.89; and it is further

Ordered, adjudged and decreed, that unless an appeal be taken from this decree within the time allowed by law and the rules and practice of this Court, the stipulators for costs on the part of the libellants cause the undertaking of their stipulation to be performed, or show cause, within four days

562 thereafter, why execution should not issue against them, their goods, chattels, credits and lands, to enforce a satisfaction of this decree; and it is further

Ordered, that unless the libellants appeal from this decree within ten days, all stipulations given herein by the claimant be cancelled of record.

CHAS. L. BENEDICT.

(Endorsed)—Final Decree.—Filed and entered the 11th day of October, 1894.

DISTRICT COURT OF THE UNITED STATES

563

FOR THE EASTERN DISTRICT OF NEW YORK.

CLIFFORD L. MIDDLETON *et al.*

vs.

S. S. "CARIB PRINCE," her engines, &c.

Please take notice that the libellants herein appeal to the United States Circuit Court of Appeals for
564 the Second Circuit from the final decree entered herein on the 11th day of October, 1894.

Dated October 19, 1894.

GEO. A. BLACK,
Proctor for Libellants.

To Messrs. CONVERS & KIRLIN,
Claimant's Proctors.

B. LINCOLN BENEDICT,
Clerk.

(Endorsed)—Notice of Appeal.—Filed October 20, 1894.

U. S. DISTRICT COURT, 565

EASTERN DISTRICT OF NEW YORK.

CLIFFORD L. MIDDLETON *et al.*

vs.

The S. S. "CARIB PRINCE."

ASSIGNMENT OF ERRORS BY LIBELLANTS-APPELLANTS. 566

FIRST.—The District Court erred in holding that the steamship *Carib Prince* was not liable to the libellants for the damage to their cargo as alleged in the libel.

SECOND.—The District Court erred in holding that the exception of latent defects in the bill of lading exempted the steamship from liability to the libellants.

THIRD.—The District Court erred in not holding that the steamship *Carib Prince* was unseaworthy at the time she sailed with the cargo on board of 567
libellants, and that such unseaworthiness caused the injury to libellants' cargo.

FOURTH.—The District Court erred in not holding that the said steamship was unseaworthy in respect to the construction of her ballast tank, which caused the injury to libellants' cargo.

FIFTH.—The District Court erred in not holding that the said steamship was unseaworthy in respect

568 to the construction of her floor over her bilges, which caused the injury to the libellants' cargo.

SIXTH.—That the said District Court erred in dismissing the libel, and should have awarded a decree in favor of libellants for the damages sustained in their cargo.

GEO. A. BLACK,
Proctor for Libellants,
44 Pine Street,
New York City.

(Endorsed)—Assignments of Error by Libellants-Appellants.—Filed October 21, 1894.

569

UNITED STATES OF AMERICA,
Eastern District of New York, } ss.:

I, B. LINCOLN BENEDICT, Clerk of the United States District Court for the Eastern District of New York, do hereby certify that the foregoing is a true transcript of all the pleadings, proofs and papers on appeal, on file in my office, in the suit of Clifford L. Middleton and another against the steamship *Carib Prince*, her engines, &c., made up to be transmitted to the United States Circuit Court of Appeals for the Second Circuit, pursuant to rule.

570 In witness whereof, I have hereunto set my hand and affixed the seal of said Court, this 15th day of November, 1894.

B. LINCOLN BENEDICT,
Clerk.

[SEAL.]

UNITED STATES DISTRICT COURT, 571

EASTERN DISTRICT OF NEW YORK.

WILLIAM GILLESPIE, COLIN MACANDREW GILLESPIE, WILLIAM AUGUSTINE GRIFFIN and HOWARD KITCHENER FRANKLIN SMITH

AGAINST

The steamship "CARIB PRINCE," her engines, &c., James Knott, Claimant. 572

STATEMENT.

1893, Dec.	7.	Libel filed. No process issued.
"	13.	Claim filed by Jas. Knott, owner.
"	"	Stipulation for value filed.
1894, March	13.	Answer filed.
June	14 and 18.	Cause tried before Hon. Charles L. Benedict, Judge.
Oct.	4.	Decision rendered. 573
"	11.	Final decree entered.
"	20.	Order of substitution entered.
"	"	Notice of appeal and assignment of errors filed.

574 To the Honorable CHARLES L. BENEDICT, United States District Judge for the Eastern District of New York:

The libel and complaint of William Gillespie, Colin MacAndrew Gillespie, William Augustine Griffin and Howard Kitchener Franklin Smith, co-partners in business as merchants in the City of New York and elsewhere, under the name and style of Gillespie Brothers & Co., against the steamship *Carib Prince*, her engines, &c., and against all persons intervening for their interest therein in a cause of affreightment, civil and maritime, alleges and articulately propounds as follows:

575

FIRST.—That on or about the twenty-second day of August, 1893, certain persons transacting business under the firm name and style of Andre Guiseppi & Co. shipped on board the steamship *Carib Prince*, then put up as a general ship, and plying as a common carrier at the port of Trinidad, B. W. I., in good order and condition, seventy-five (75) bags of cocoa marked $\frac{\text{A. G. \& C.}}{\text{G. B. \& C.}}$, 1-75, and consigned the same to their order.

SECOND.—That thereupon the said shippers received from the agents of the said steamship a cer-
576 tain written bill of lading, duly executed by them, wherein and whereby they acknowledged the receipt of said cocoa in good order and condition, and agreed to deliver the same in like good order and condition to the order of the said shippers in the port of New York, upon the payment of freight thereupon at a rate therein fixed.

THIRD.—That thereupon the said steamship sailed from the said port and thereafter arrived at the port of New York and delivered the said shipment to your libellants, but not in like good order and condi-

tion as shipped, the said cocoa being badly damaged and deteriorated in value through contact with sea water. 577

FOURTH.—That heretofore the said shippers duly sold and delivered to your libellants the said shipment of cocoa, and duly assigned to them the said bill of lading and their rights in the premises.

FIFTH.—That by reason of the matters aforesaid your libellants became and are damaged in the sum of eight hundred and two $\frac{20}{100}$ dollars ($802.20).

SIXTH.—The said steamship *Carib Prince* is now within the jurisdiction of this Honorable Court. 578

SEVENTH.—That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore, your libellants pray that process of arrest in due form of law, according to the course of this Honorable Court in like causes, may issue against the said steamship, her engines, &c., and against all persons intervening for their interests therein, and that the said steamship may be condemned and sold to satisfy the demands of your libellants, with interest and costs.

579

Southern District of New York, ss.:

G. DECORDOVA and J. F. WEBER, being duly sworn, depose and say: That they are the agents and attorneys in fact of the libellants above named; that they have read the foregoing libel and know the contents thereof, and that the same is true of their own knowledge; that deponents' knowledge is derived from papers and documents in their possession, showing the shipment of said goods, and their value, and the injury sustained by them. That the reason

580 why this verification is made by deponents and not by the libellants is that none of the libellants are now within the United States.

P. P. GILLESPIE BROS. & Co.
G. DECORDOVA.
J. F. WEBER.

Sworn to before me this 7th day of December, 1893.

HENRY HESSE,
[L. S.] Notary Public (54),
N. Y. City and Co.

SIDNEY CHUBB,
Proctor for Libellants.

581 (Endorsed)—Libel and Complaint.—Filed December 7, 1893.

To the Honorable CHARLES L. BENEDICT, United States District Judge for the Eastern District of New York:

The answer of James Knott, owner and claimant of the steamship *Carib Prince*, to the libel and complaint of William Gillespie, Colin MacAndrew Gillespie, William Augustine Griffin and Howard Kitchener Franklin Smith, described as and copartners in business as merchants, in the City of New York and elsewhere, under the firm name and style of
582 Gillespie Bros. & Co., against the steamship *Carib Prince*, her engines, &c., and against all persons intervening for their interest therein, in a cause of affreightment, civil and maritime, alleges as follows:

FIRST.—He has no knowledge of the matters alleged in the first article of the libel, and requires proof thereof, if and in so far as they are material.

SECOND.—He has no knowledge of the matters alleged in the second article of the libel, and requires proof thereof, if and in so far as they are material.

THIRD.—He has no knowledge of the matters al- 583
leged in the third article of the libel, and requires proof thereof, if and in so far as they are material.

FOURTH.—He has no knowledge of the matters alleged in the fourth article of the libel, and requires proof thereof, if and in so far as they are material.

FIFTH.—He has no knowledge of the matters alleged in the fifth article of the libel, and requires proof thereof, if and in so far as they are material.

SIXTH.—He admits the matters contained in the sixth article of the libel.

584

SEVENTH.—He denies that all and singular the premises are true, but admits the jurisdiction.

EIGHTH.—For a further defense, the claimant avers that the bills of lading under which the merchandise in question is alleged to have been carried, provided that the merchandise in question was "to be delivered from the ships's deck, where the ship's responsibility shall cease, in the like good manner and well conditioned, at the aforesaid port of New York; the act of God * * * loss or damage from heat or fire on board, in hulk or craft or on shore; explosion, steam, accidents to or latent defects in hull, tackle, boilers and machinery, or their appurtenances, jettison, barratry, any act, neglect or default whatsoever of pilots, masters or crew in the management or navigation of the ship * * * and all and every other dangers and accidents of the seas, rivers, or steam navigation, of whatever nature or kind, always excepted * * * Weight, measure, quality, contents and value unknown, and not accountable for inaccurate description of goods shipped, for leakage, breakage or insufficiency in packing, or in strength of package, obliteration of, or inaccuracies of marks, numbers, designation, or address on the

585

586 packages, nor for damage or loss from vermin, sweating, decay, heat of holds, contact with, or smell or evaporation from other goods, nor for any consequences arising from any of the foregoing exceptions."

That the owner and charterer of said vessel used all due diligence to have her properly equipped, manned, provisioned and outfitted, and in every way seaworthy and capable of performing her intended voyage, and used all due diligence in and about the transportation of the merchandise in question, and alleges that if the cargo mentioned in the libel was damaged as alleged, the damage was
587 due to latent defects in certain rivets, angle irons, braces and straps in the bulkhead between No. 1 hold and the peak tank just forward of it, or to some error or fault in the management or navigation of the vessel in filling the said peak tank on the voyage, as will more fully appear on the trial of this cause.

The claimant further alleges that each and all of the above mentioned exemptions in the bill of lading are valid by the law of England, which prevails at the port where said merchandize is claimed to have been shipped, and where the said bills of lading are alleged to have been issued.

Wherefore, claimant prays that the libel may be dismissed, with costs, or that the claimant have
588 such other relief as he may be entitled to receive.

CONVERS & KIRLIN,
Proctors for Claimant.

Southern District of New York, ss.:

E. B. CONVERS, being duly sworn, says: That he is one of the proctors for the claimant herein, and that the foregoing answer is true, according to his information and belief, derived from statements made by the officers of said steamship. He further

says that the claimant is absent from the United States. 589

E. B. CONVERS.

Sworn to before me this 13th day of March, 1894.

CHARLES A. BRODEK,
[L. S.] Notary Public,
New York County.

(Endorsed)—Answer.—Filed March 13, 1894.

UNITED STATES DISTRICT COURT. 590

EASTERN DISTRICT OF NEW YORK.

WILLIAM GILLESPIE *et al.*

vs.

Steamship "CARIB PRINCE."

The testimony and exhibits adduced upon the trial of this Court and the opinion of the District Judge having been included in the record certified by the 591
Clerk in the suit of Josephine W. Wupperman against the steamship *Carib Prince*, we hereby stipulate that the same may be omitted upon the record certified in this cause.

November 7, 1894.

CONVERS & KIRLIN,
Proctors for Liblt.
GEORGE A. BLACK,
Liblts.' Proctor.

592 At a Stated Term of the United States District Court for the Eastern District of New York, held in the Post Office Building in the City of Brooklyn, on the 11th day of October, 1894.

Present—Hon. CHARLES L. BENEDICT,
District Judge.

WILLIAM GILLESPIE *et al.*,
Libellants,

AGAINST

593 The Steamship "CARIB PRINCE," James Knott,
Claimant.

The above entitled cause having come on to be heard, on the pleadings and proofs of the respective parties, and after hearing the advocates of the respective parties, and due deliberation having been had, now, on motion of Convers & Kirlin, proctors for the claimant, it is

Ordered, adjudged and decreed, that the libel in this cause be, and the same hereby is, dismissed, with costs; and the costs of the claimant having
594 been taxed at the sum of $77.88; it is further

Ordered, adjudged and decreed, that the claimant, James Knott, recover in this action against the libellants above named, William Gillespie, Colin McAndrew Gillespie, William Augustine Griffin and Howard Kitchener Franklin Smith, the sum of $77.88; and it is further

Ordered, adjudged and decreed, that unless an appeal be taken from this decree, within the time allowed by law, and the rules and practice of this Court, the stipulators for costs on the part of the libellants, cause the undertakings of their stipulation to be performed, or show cause, within four

days thereafter, why execution should not issue 595
against them, their goods, chattels, credits and lands, to enforce a satisfaction of this decree; and it is further

Ordered, that unless the libellants appeal from this decree within ten days, all stipulations given herein by the claimant be cancelled of record.

CHAS. L. BENEDICT.

(Endorsed)—Final Decree.—Filed and entered the 11th day of October, 1894.

At a Stated Term of the District Court of the United States for the Eastern District of New York, held at the 596
Court Rooms in the U. S. Court House and Post Office Building, in the City of Brooklyn, on the 20th day of October, 1894.

Present—CHAS. L. BENEDICT, *District Judge*.

WILLIAM GILLESPIE *et al.*

vs.

S. S. "CARIB PRINCE," her engines, &c.

597

On reading and filing the annexed consent, it is

Ordered, that George A. Black be, and hereby is, substituted in the place and stead of Sidney Chubb, Esq., as proctor for the libellants herein.

CHAS. L. BENEDICT.

I consent to the entry of above order.

SIDNEY CHUBB,
Proctor for Libellants.

(Endorsed)—Consent and Order for Substitution.—Filed and entered the 20th day of October, 1894.

598 DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF NEW YORK.

WILLIAM GILLESPIE *et al.*

vs.

Steamship "CARIB PRINCE," her engines, &c.

599 Please take notice that the libellants herein appeal to the United States Circuit Court of Appeals for the Second Circuit from the final decree entered herein on the 11th day of October, 1894.

Dated October 19, 1894.

GEO. A. BLACK,
Proctor for Libellants.

To Messrs. CONVERS & KIRLIN,
Claimant's Proctors.

B. LINCOLN BENEDICT, Esq.,
Clerk.

(Endorsed)—Notice of Appeal.—Filed Oct. 20, 1894.
600

UNITED STATES DISTRICT COURT, 601

EASTERN DISTRICT OF NEW YORK.

WILLIAM GILLESPIE *et al.*

vs.

The Steamship "CARIB PRINCE."

ASSIGNMENT OF ERRORS BY LIBELLANTS-APPELLANTS. 602

FIRST.—The District Court erred in holding that the steamship *Carib Prince* was not liable to the libellants for the damage to their cargo alleged in the libel.

SECOND.—The District Court erred in holding that the exception of latent defects in the bill of lading exempted the steamship from liability to the libellants.

THIRD.—The District Court erred in not holding that the steamship *Carib Prince* was unseaworthy at the time she sailed with the cargo of libellants on board, and that such unseaworthiness caused the 603
injury to libellants.

FOURTH.—The District Court erred in not holding that the said steamship was unseaworthy in respect to the construction of her ballast tank, which caused the injury to libellants' cargo.

FIFTH.—The District Court erred in not holding that the said steamship was unseaworthy in respect to the construction of her floor over her bilges, which caused the injury to libellants' cargo.

604 SIXTH.—That the said District Court erred in dismissing the libel and should have awarded a decree in favor of libellant for the damages sustained to their cargo.

GEO. A. BLACK,
Proctor for Libellant,
44 Pine St.,
New York City.

(Endorsed)—Assignment of Errors by Libellants-Appellants.—Filed October 20, 1894.

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605 UNITED STATES OF AMERICA, }
Eastern District of New York, } ss.:

I, B. LINCOLN BENEDICT, Clerk of the United States District Court for the Eastern District of New York, do hereby certify that the foregoing is a true transcript of the pleadings, proofs and papers on appeal on file in my office in the suit of William Gillespie *et al.* against the steamship *Carib Prince*, her engines, &c., made up to be transmitted to the United States Circuit Court of Appeals for the Second Circuit, pursuant to rule.

In witness whereof I have hereunto set my hand and affixed the seal of said Court at the City of
606 Brooklyn, this 15th day of November, 1894.

B. LINCOLN BENEDICT,
[SEAL.] Clerk.

U. S. Circuit Court of Appeals

FOR THE SECOND CIRCUIT.

JOSEPHINE W. WUPPERMANN
vs.
The Steamship CARIB PRINCE.

CLIFFORD L. MIDDLETON, *et al.*
vs.
The same.

MANUEL CADENAS and another
vs.
The same.

WILLIAM GILLESPIE, *et al.*
vs.
The same.

SHIPMAN, *C. J.* These four actions were brought by cargo owners to recover from the British steamship Carib Prince, the damages which a part of her cargo received on a voyage from Grenada to New York which commenced about August 31, 1893. The bills of lading, which were signed in Trinidad, a port governed by English law, excepted the ship from liability for injuries arising from "latent defects in hull, tackle, boilers and machinery."

The vessel was a new steel steamer of 2,500 tons dead weight capacity, built in the spring of 1893 at Sunderland, England, by experienced builders. She was "constructed with a water tank

of iron in her peak, one side of which was formed by a bulkhead. The tank, when she sailed from Grenada, was empty, but during the voyage from Grenada to New York it was filled with water one afternoon, in order to trim the vessel," and the next morning, or the morning after, the tank was found partially empty, and investigation showed that the head had come off from one of the rivets riveting the side of the bulkhead next to the hold, and leaving a hole through which water had poured upon the libellants' merchandise stowed near the bulkhead. The rivet was the end rivet in a series which attached a transverse "knee tie" to the bulkhead on the inside of the tank.

The testimony clearly showed that abundant diligence was used in the construction of the vessel, that the defect in the rivet was a latent one which occurred at the time of the vessel's construction, which was not discovered and was not discoverable at that time, or subsequently, by the exercise of all the known and customary tests and methods of examination, which were all employed : that it was a latent and undiscovered defect in the hull of the vessel at the commencement of the voyage from Trinidad, that, consequently, the vessel was not, at said time, seaworthy, and that the injury occurred solely through this unseaworthiness and not by reason of filling the tank injudiciously.

The main question in the case is whether the bills of lading expressly or clearly limited the implied and absolute warranty of seaworthiness, which is that the ship was in fact seaworthy at the commencement of the voyage, and is a warranty against latent, unknown and not discoverable defects. (The Edwin I. Morrison, 153 U. S. 199. The Caledonia, 156 U. S. The Glenfruin, 10 Prob., Div. 103.) The recent case of the Caledonia, *supra*, declared that exemptions in bills of lading which limit the extent of this implied warranty, must be expressed in clear terms, or they will be construed strongly against the ship-owner, and consequently held that an exemption which excluded loss or damage from defects in steam boilers and machinery, did not mean defects existing at the commencement of the voyage, and thereupon did not protect the owner from liability for unseaworthiness.

The bills of lading in these cases exclude losses arising from latent defects in the hull, and the question is whether this language does not necessarily mean defects existing at the time of shipment, and therefore whether it does not clearly

and even expressly exclude unseaworthiness arising from such defects.

The only case in which the effect of an exemption of "latent defects" is discussed is "The Laertes, 12 Prob., Div. 187," but in that case the language of the bill of lading was "latent defects * * even existing at time of shipment," so that the intention of the parties to limit the implied warranty was manifest. In the cases at bar, it is urged that latent defects must necessarily mean those existing at the time of shipment, and that any other construction is exceedingly strained. A defect in order to be latent must have been not discoverable at the time of the shipment. It could not in its nature have been capable of discovery then and have become capable of evading discovery subsequently. A construction which should say that latent defects meant those only which had become latent since the vessel left the wharf, and could not mean previously existing defects, savors of the distinctions of the schoolmen, and if latent defects existing upon the voyage are exempted, those existing at the time of the shipment are included, for they are the same.

We concur with the experienced district judge, that the exception "limits the warranty which the law would otherwise imply, that the ship was seaworthy at the beginning of the voyage, and exempts the ship if due diligence is exercised by the owner."

It is insisted by the libellants that the second section of the act of February 13, 1893 (27 U. S. Stat. 445), commonly known as the Harter Act, prohibits any clause in a bill of lading which limits the implied warranty of seaworthiness. The section is as follows:

"Sec. 2. That it shall not be lawful for any vessel transporting merchandise or property from or between ports of the United States of America and foreign ports, her owner, master, agent, or manager, to insert in any bill of lading or shipping document any covenant or agreement whereby the obligations of the owner or owners of said vessel to exercise due diligence properly equip, man, provision and outfit said vessel, and to make said vessel seaworthy and capable of performing her intended voyage, or whereby the obligations of the master, officers, agents or servants to carefully handle and stow her cargo and to care for and properly deliver the same, shall in any wise be lessened, weakened, or avoided."

Waiving the question whether this section applies to a foreign contract entered into by owners who are foreigners, the section does not bear the construction placed upon it by the libellants, which is that a comma shall be inserted after the word "diligence," and that the clause respecting seaworthiness shall be read as a prohibition of any covenant or agreement "whereby the obligations of the owner of said vessel to make said vessel seaworthy, &c., shall in any wise be lessened." The language of the section, as passed by the House of Representatives, permits this construction, but in the Senate the words "exercise due diligence" were inserted prior to the words "properly equip," and the evident intent of the section as amended and the effect of the amendment, was to prohibit covenants whereby the obligation of the owners to exercise due diligence *to* properly equip, man, provision and outfit his vessel and to make her seaworthy should be lessened. A like amendment was inserted in the third section, which provided that if the owner exercised due diligence to make the vessel seaworthy, he should not be responsible for damage resulting from subsequent faults in navigation. These amendments indicate the intent which ran through the act as it left the Senate, and make it plain that one design of the act as amended was to permit the owner to relieve himself from the rigidity of the warranty of seaworthiness but not to permit him to lessen his obligation to exercise due diligence in all respects at the inception of the voyage.

The claimant endeavored to show that the cause of the injury was an error of the master in filling the tank at sea, and that therefore the owner was protected by the third section of the Harter Act, but as the injury did not arise from an error in the management of the vessel, an examination of this section is unnecessary.

The decrees of the District Court are affirmed with costs.

GEORGE A. BLACK,
For the Libellants.

J. PARKER KIRLIN,
For the Respondents.

(Endorsed) United States Circuit Court of Appeals, for the Second Circuit.—Josephine W. Wupperman *v.* The Steamship Carib Prince.—Clifford L. Middleton, *et al.*, *v.* Same.—Manuel Cardenas, *et al.*, *v.* Same.—William Gillespie, *et al.*, *v.* Same.—Opinion, Shipman, C J.—United States Circuit Court of Appeals, Second Circuit, filed May 28, 1895, James C. Reed, Clerk.

217 UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

I, James C. Reed, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing pages, numbered from one to two hundred and sixteen, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cases of Josephine Wuppermann, libellant and appellant, *vs.* The Steamship "Carib Prince," her engines, &c., Ernest C. Legge, claimant and appellee; Manuel Cadenas and Edward P. Coe, libellants and appellants, *vs.* The Steamship "Carib Prince," her engines, &c.; James Knott, claimant and appellee; Clifford L. Middleton and Donald S. L. Lee, libellants and appellants, *vs.* The Steamship "Carib Prince," her engines, &c.; James Knott, claimant and appellee; William Gillespie, Colin MacAndrew Gillespie, William Augustine Griffin, and Howard Kitchener Franklin Smith, libellants and appellants, *vs.* The Steamship "Carib Prince," her engines, &c.; James Knott, claimant and appellee, as the same remain- of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this first day of June, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the said United States the one hundred and nineteenth.

Seal United States Circuit Court of Appeals, Second Circuit.

JAMES C. REED, *Clerk.*

218 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the second circuit, Greeting:

Being informed that there is now pending before you a suit in which Josephine W. Wupperman is appellant and The Steamship "Carib Prince," her engines, &c.—Ernest Legge, claimant—is appellee, which suit was removed into the said circuit court of appeals by virtue of an appeal from the district court of the United States for the eastern district of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals
219 and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the

United States, the 23d day of October, in the year of our Lord one thousand eight hundred and ninety-five.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

We consent that the certified copy of the proceedings in the U. S. circuit court of appeals for the second circuit in the case of Wupperman *vs.* The S. S. Carib Prince, filed with the petition for certiorari, be taken as the return to the within certiorari.

Nov. 16th, 1895.

CONVERS & KIRLIN,
Proctors for Claimant of Carib Prince.
GEO. A. BLACK,
Proctor for Lib'l't.

220 [Endorsed:] Supreme Court of the United States. No. 639, October term, 1895. Josephine W. Wupperman *vs.* The Steamship "Carib Prince," &c. Writ of certiorari.

221 At a stated term of the United States circuit court of appeals for the second circuit, held at the United States court-rooms, in the post-office building, in the city of New York, on the fifth day of June, 1895.

Present: Hon. William J. Wallace, Hon. E. Henry Lacombe, Hon. Nathaniel Shipman, circuit judges.

JOSEPHINE W. WUPPERMANN, Appellant,
against
THE STEAMSHIP CARIB PRINCE; JAMES KNOTT, Claimant.

The appeal of the libelant herein having come on for hearing in this court and having been argued by the advocates of the respective parties and submitted and due deliberation being had, now, on motion of Convers & Kirlin, proctors for the claimant, it is—

Ordered, adjudged, and decreed that the decree of the district court for the eastern district of New York herein be, and the same hereby is, affirmed, with costs of this court to the claimant.

And on like motion it is further—

Ordered that a mandate issue from this court to said district court to take such further proceedings as may be required in conformity with the opinion of the court and with this order herein.

E. H. L.
N. S.

222 SIR: Please take notice that the foregoing order will be handed to the clerk of the circuit court of appeals, at his chambers, in the post-office building, New York, on June 5th, 1895, at ten o'clock a. m., for transmission to the judges of the circuit court of appeals.

Yours, &c.,
CONVERS & KIRLIN,
Proctors for Claimant, App'ee.

New York, June 3rd, 1895.

To George A. Black, Esq., proctor for libelant, appellant.

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223 [Endorsed:] U. S. circuit court of appeals. Josephine W. Wuppermann against The Steamship Carib Prince. Order affirming decree and notice. Convers & Kirlin, proctors for appellee, 5 Beekman St., New York, N. Y. U. S. circuit court of appeals, second circuit. Filed June 5, 1895. James C. Reed, clerk. Rec'd June 4, '95.

224 UNITED STATES OF AMERICA, }
Southern District of New York, } ss:

I, James C. Reed, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing pages, numbered from two to five, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Josephine W. Wupperman, libellant, appellant, against The Steamship "Carib Prince," libellant, appellee, as the same remains of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this tenth day of December, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the said United States the one hundred and twentieth.

[Seal United States Circuit Court of Appeals, Second Circuit.]

JAMES C. REED, *Clerk.*

[Endorsed:] Carib Prince. No. 639. Return. 639, 15,928. Jan. 10th, 1896.

225 [Endorsed:] Case No. 15,928. Supreme Court U. S., October term, 1895. Term No., 639. Josephine W. Wupperman, appellant, *vs.* Steamship "Carib Prince," &c. Writ of certiorari and return. Filed Jan. 10, 1896.

Endorsed on cover: Case No. 15,928. U. S. circuit court of appeals, second circuit. Term No., 639. Josephine W. Wuppermann, appellant, *vs.* The Steamship "Carib Prince," her engines, &c., Ernest Legge, claimant. Filed June 3rd, 1895.